

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

DOROTHY MOUNCE, individually)
and as Personal Representa-)
tive of the ESTATE OF)
TIMOTHY MOUNCE, DECEASED,)
Plaintiff,)

vs)

THE PRUDENTIAL INSURANCE)
COMPANY OF AMERICA and)
PEGGY MOUNCE,)
Defendants,)

FILED

MAY 08 1995

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

Case #94-C-747-B

ENTERED ON DOCKET

DATE JUL 31 1995

ORDER DIRECTING DISBURSAL OF PROCEEDS

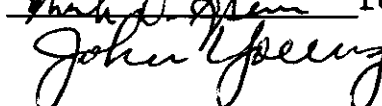
April 7, 1995 this Court entered final judgment in favor of Prudential, awarding costs and attorney fees to Prudential in the amount of \$6,725.25 and directing disbursal thereof. The Court hereby clarifies its' Order Directing Disbursal of Proceeds. The Clerk is directed to make the \$6,725.25 disbursal, as soon as practicable after the next renewal date of the instrument into which the principal sum of \$104,922.30 is presently invested, by issuing a check payable to The Prudential Insurance Company of America and deliver it to Prudential's counsel of record. FURTHER, the Clerk shall reinvest the balance of these funds until further order of the Court.

✓ 5/30/95-jc
IT IS ORDERED that counsel presenting this order serve a copy thereof on the Court Clerk or the Chief Deputy Court Clerk personally. Absent this service, the Clerk is relieved of any personal liability relative to compliance with this order.


Sven Erik Holmes,
United States District Judge

Agreed:  for Plaintiff

 for Defendant

 for Plaintiffs.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

IRVIN D. BLAIR,

Plaintiff,

v.

SHIRLEY S. CHATER, Commissioner of
Social Security,^{1/}

Defendant.

No. 94-C-⁶⁸⁶~~657~~-K

JUL 31 1995

Richard M. Lawrence, Clerk
U.S. District Court
Northern District of Oklahoma

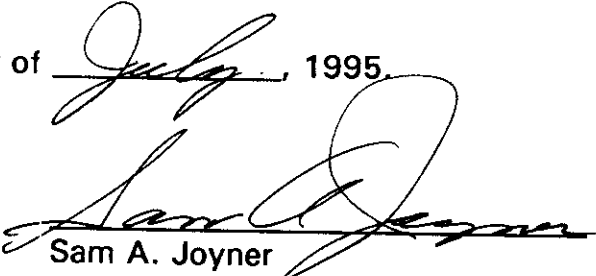
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DATE JUL 31 1995

JUDGMENT

This action has come before the Court for consideration and an Order remanding the case to the Administrative Law Judge has been entered. Judgment for the Plaintiff and against the Defendant is hereby entered pursuant to the Court's Order.

It is so ordered this 31 day of July, 1995.


Sam A. Joyner

United States Magistrate Judge

^{1/} Effective March 31, 1995, the functions of the Secretary of Health and Human Services in social security cases were transferred to the Commissioner of Social Security. P.L. No. 103-296. Pursuant to Fed. R. Civ. P. 25(d)(1), Shirley S. Chater, Commissioner of Social Security, is substituted for Donna E. Shalala, Secretary of Health and Human Services, as the Defendant in this action.

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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 31 1995

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IRVIN D. BLAIR,

Plaintiff,

v.

SHIRLEY S. CHATER, Commissioner of
Social Security,^{1/}

Defendant.

No. 94-C-657-K

ENTERED ON DOCKET

DATE JUL 31 1995

ORDER

Plaintiff Irvin D. Blair, pursuant to 42 U.S.C. § 405(g), requests judicial review of the decision of the Secretary of Health and Human Services which denied Social Security benefits.^{2/} Plaintiff contends that: (1) the Secretary's decision to deny benefits is not supported by substantial evidence, (2) the Secretary did not adequately develop the record or consider Plaintiff's complaints of pain, and (3) Plaintiff meets a listed impairment (20 C.F.R. Pt. 404, Subpt. P, App. 1) and is therefore disabled.

^{1/} Effective March 31, 1995, the functions of the Secretary of Health and Human Services ("Secretary") in social security cases were transferred to the Commissioner of Social Security. P.L. No. 103-296. Pursuant to Fed. R. Civ. P. 25(d)(1), Shirley S. Chater, Commissioner of Social Security, is substituted for Donna E. Shalala, Secretary of Health and Human Services, as the Defendant in this action. Although the Court has substituted the Commissioner for the Secretary in the caption, the text of this Order will continue to refer to the Secretary because she was the appropriate party at the time of the underlying decision.

^{2/} Plaintiff filed applications for supplemental security income and disability insurance benefits claiming disability due to post polio syndrome, ulcers, and high blood pressure. These applications were denied initially and upon reconsideration. *R. at 11*. A hearing before an Administrative Law Judge ("ALJ") was held September 7, 1993. By order dated February 25, 1994, the ALJ determined that Plaintiff was not disabled and was not entitled to disability insurance. *R. at 14*. On May 19, 1994, the Appeals Council denied Plaintiff's request for review.

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A decision by the Secretary will be upheld on appeal if it is supported by substantial evidence and follows applicable legal standards. See Washington v. Shalala, 37 F.3d 1437, 1439 (10th Cir. 1994). For the reasons outlined below, the Court reverses and remands for further consideration by the Secretary.

I. PLAINTIFF'S BACKGROUND

Plaintiff was born on November 12, 1945 and has a twelfth grade education. *R. at 28, 29.* For the past fifteen years, Plaintiff has worked as a salesman at an auto parts store. *R. at 29.* Although Plaintiff has not engaged in substantial gainful activity since April 1, 1991, Plaintiff has continued to work part-time at a parts store.^{3/} *R. at 122.* Plaintiff lives alone, and occasionally drives short distances. *R. at 53, 70.*

Plaintiff testified that he has pain in his right hip upon exertion, that his left leg begins to swell after he has been standing or walking for a period of time,^{4/} and that he has difficulty reaching and grasping. *R. at 8-9.* Plaintiff also testified that his right knee sometimes collapses, causing him to fall several times each week. *R. at 50-53.* In addition, Plaintiff claims that walking is difficult and sitting is even more difficult,^{5/} causing him pain. *R. at 50-52.*

^{3/} The record is unclear on the exact amount of time which Plaintiff worked. Plaintiff apparently worked between two and four hours a day, from three to five days each week. *R. at 34, 119, 120, 122, 123.*

^{4/} Claimant states his leg begins to swell after he has been standing "on it for a few minutes or a [sic] hour or so." *R. at 33.*

^{5/} Plaintiff testified that standing for any amount of time over ten minutes causes him pain. *R. at 54.* Plaintiff's testimony is unclear on the amount of time he can sit without pain. Plaintiff testified that he sat during his drive to the hearing for approximately one hour, has been sitting throughout the hearing, and is hurting "a little bit." *R. at 50-55.*

Plaintiff's Residual Physical Functional Capacity Assessment, conducted by Dr. Vallis D. Anthony (March 5, 1992), indicated that Plaintiff could stand and/or walk for at least two hours in an eight hour day, and sit for a total of at least six hours in an eight hour day. *R. at 75.* Dr. Anthony noted that Plaintiff's gait, with a brace, was stable, but that Plaintiff limps. *R. at 76.* In addition, Plaintiff was described as occasionally being able to lift and/or carry ten pounds, while being able to frequently carry five to ten pounds. *R. at 75.*

A second Residual Physical Functional Capacity Assessment, conducted by a different doctor^{6/} on September 1, 1992, indicated that Plaintiff could stand and/or walk for at least two hours in an eight hour day, and sit for a total of at least six hours in an eight hour day. *R. at 94.* In addition, the doctor noted that Plaintiff's pain does not limit his residual functional capacity. *R. at 94.* Plaintiff was described as being able to lift ten pounds occasionally and five to ten pounds frequently. *R. at 94.*

Dr. B.G. Henderson has treated Plaintiff since October 29, 1991 for high blood pressure. *R. at 138.* In Dr. Henderson's medical report, dated February 5, 1992, he states that Plaintiff's high blood pressure is not currently under control. *R. at 138.* Dr. Henderson summarizes Plaintiff's medical impairments as including: left leg and right upper arm deformity due to polio, muscle atrophy due to polio, scoliosis of the back, and pelvic tilt due to polio, uncontrolled high blood pressure, and a previous history of ulcers. Dr. Henderson concluded that he "feel[s] that this man is unable to

^{6/} The name of the doctor performing the assessment on September 1, 1992 is unclear from the record. *R. at 100.*

sit, stand or walk very far at the present time due to the effects of polio. His blood pressure has been coming under control but at the present time is not under control."

R. at 139.

Dr. James Lowell reviewed the medical records of the Plaintiff (for the Secretary), and provided a summary.^{7/} Dr. Lowell testified that Plaintiff had poliomyelitis when he was nine months old, and walked with the assistance of crutches until he was five years old. *R. at 34.* Plaintiff is currently required to wear a leg brace which extends from his left hip to his foot. *R. at 144.* Plaintiff's right arm is smaller than his left arm, and Plaintiff is unable to raise his right arm above his shoulder. *R. at 34.* Plaintiff's right arm grip strength is fifty percent weaker than his left arm. *R. at 37, 146-47.* However, Plaintiff can "effectively manipulate small objects and grasp tools." *R. at 37-38.* Plaintiff has muscle atrophy of the left leg, right upper arm, and shoulder. *R. at 36-37.* In addition, Plaintiff has a tilted pelvis (to the left), and scoliosis, or curvature of the lumbar spine. *R. at 35.* Plaintiff's strength in his left leg is essentially zero. *R. at 37.* Although Plaintiff does not require a cane or crutch to walk, Plaintiff has an "extreme limp, but ambulation was considered to be slow but fairly stable." *R. at 37.* Plaintiff had an active duodenal ulcer in January of 1993,^{8/} and has been effectively treated for high blood pressure. *R. at 38.*

^{7/} Dr. Lowell did not treat or examine Plaintiff. *R. at 34.*

^{8/} Medical records from Dr. J. Gumbs, dated January 29, 1993, indicate that Plaintiff has an acute duodenal bulb ulcer. *R. at 167.*

Dr. Lowell concluded that Plaintiff's limitations establish that Plaintiff would not be able to walk long distances, would have difficulty going up and down steps, would probably be able to sit fairly well with a cushion, and would be unable to do something which required great strength in two arms, although he would be able to do such tasks with one arm. *R. at 39.* In Dr. Lowell's opinion, the severity of Plaintiff's impairments were "moderate," and perhaps "moderate severe." *R. at 41.*

Dr. Reimer examined the Plaintiff on July 21, 1992. *R. at 146.* Dr. Reimer noted that Plaintiff had severe muscle atrophy of the left leg, and that Plaintiff's grip strength in his upper right arm was 50% weaker than his left arm. *R. at 147.* Plaintiff's right leg was normal, but Plaintiff had severe atrophy in his left leg. *R. at 147.* Plaintiff was able to walk without a cane or crutch, but did use his brace. *R. at 147.* Plaintiff walked with a stiff leg and extreme limp (with a pelvic tilt to the left), but was fairly stable. *R. at 147.* Plaintiff's dexterity was fairly normal, and Plaintiff was able to pick up small coins and paper clips without much difficulty. *R. at 147.*

II. THE SEQUENTIAL EVALUATION PROCESS

A claimant is disabled under the Social Security Act if:

physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work in the national economy. . . .

42 U.S.C. § 423(d)(2)(A).

The Secretary has established a five-step^{9/} sequential process for the evaluation of social security claims. See 20 C.F.R. § 404.1520; Bowen v. Yuckert, 482 U.S. 137, 140-142 (1987); Williams v. Bowen, 844 F.2d 748, 750-53 (10th Cir. 1988).

The ALJ's evaluation of Plaintiff's claim in this case terminated at step four of the sequential evaluation process. The ALJ determined that Plaintiff had the ability to perform his past relevant work as a parts salesman. *R. at 13.*

III. STANDARD OF REVIEW

The Secretary's disability determinations are reviewed, on appeal, to determine if: (1) the correct legal principles have been followed, and (2) the decision is supported by substantial evidence. See 42 U.S.C. § 405(g); Williams, 844 F.2d at 750. The Court, in determining whether the decision of the Secretary is supported by substantial evidence does not reweigh the evidence or examine the issues *de novo*. Sisco v. U.S. Dept. of Health and Human Services. 10 F.3d 739, 741 (10th Cir. 1993).

^{9/} Step one requires the claimant to establish that he is not engaged in substantial gainful activity (as defined at 20 C.F.R. §§ 404.1510 and 404.1572). Step two requires that the claimant demonstrate that he has a medically severe impairment or combination of impairments that significantly limit his ability to do basic work activities. See 20 C.F.R. § 1521. If claimant is engaged in substantial gainful activity (step one) or if claimant's impairment is not medically severe (step two), disability benefits are denied. At step three, claimant's impairment is compared with those impairments listed at 20 C.F.R. Pt. 404, Subpt. P, App. 1 (the "Listings"). If a claimant's impairment is equal to or the medical equivalence of an impairment in the Listings, claimant is presumed disabled. If a Listing is not met, the evaluation proceeds to step four, where the claimant must establish that his impairment or the combination of impairments prevents him from performing his past relevant work. A claimant is not disabled if the claimant can perform his past work. If a claimant is unable to perform his previous work, the Secretary has the burden of proof (step five) to establish that the claimant, in light of his age, education, and work history, has the residual functional capacity ("RFC") to perform an alternative work activity in the national economy. If a claimant has the RFC to perform an alternate work activity, disability benefits are denied. See Bowen v. Yuckert, 482 U.S. 137, 140-42 (1987); Williams v. Bowen, 844 F.2d 748, 750-51 (10th Cir. 1988).

Substantial evidence is that amount and type of evidence that a reasonable mind will accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389, 401 (1971); Williams, 844 F.2d at 750. In terms of traditional burdens of proof, substantial evidence is more than a scintilla, but less than a preponderance. Perales, 402 U.S. at 401. Evidence is not substantial if it is overwhelmed by other evidence in the record. Williams, 844 F.2d at 750.

IV. REVIEW

Substantial Evidence

The ALJ concluded that Plaintiff suffered from the following impairments: severe left leg deformity, right upper arm deformity, muscle atrophy, scoliosis, pelvic tilt, hypertension and ulcers. *R. at 12-13*. However, the ALJ found that the "evidence of record demonstrates that the claimant can perform his past work" *R. at 12*. The ALJ also determined that the Plaintiff's Residual Functional Capacity ("RFC")^{10/} permitted Plaintiff to engage in "light work." *R. at 13*. The ALJ made no specific findings with respect to the requirements of Plaintiff's past relevant work or the medical opinions of Plaintiff's treating doctors. *R. at 12-13*.

The record fails to provide substantial evidence that Plaintiff is able to perform his past relevant work. Plaintiff's past relevant work was as an auto parts salesman. Plaintiff testified that his work consisted of "waiting on people . . . , looking up the parts, going back to the shelf and getting them, [and] writing tickets." *R. at 30*.

^{10/} Residual Functional Capacity is "the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirement of jobs." 20 C.F.R. Pt. 404, Subpt. P, App. 2 § 200.00(c).

Plaintiff has continued working part-time, and testified that his difficulties at performing his job have increased. "I didn't [used] to have a problem of reaching up and grabbing a starter or alternator off of a shelf and carrying it back, now, I've started dropping them and everything else, bouncing them off of my feet." *R. at 32.* The record does not indicate the weight that Plaintiff would be required to lift frequently or occasionally, and the record does not indicate the amount of time that Plaintiff would be required to stand and/or sit at his past relevant work as a parts salesman.^{11/}

Social Security Regulation 82-62 requires an ALJ to develop the record with respect to a claimant's past relevant work.

The decision as to whether the claimant retains the functional capacity to perform past work which has current relevance has far-reaching implications and must be developed and explained fully in the disability decision.

....
[D]etailed information about strength, endurance, manipulative ability, mental demands and other job requirements must be obtained as appropriate. This information will be derived from a detailed description of the work obtained from the claimant, employer, or other informed source. Information concerning job titles, dates work was performed, rate of compensation, tools and machines used, knowledge required, the extent of supervision and independent judgment required, and a description of tasks and responsibilities will permit a

^{11/} A November 5, 1991 Vocational Report, completed by Plaintiff, indicates that his part-time job includes walking up to two hours per day, standing up to two hours per day, and sitting up to one hour per day. *R. at 116.* Plaintiff additionally indicated that the heaviest weight lifted during his job was approximately ten pounds. *R. at 116.* However, Plaintiff also noted that his job duties were different from other workers because of: shorter hours, different pay scale, fewer/easier duties, lower production, and absences from work. *R. at 120.* Regardless, the requirements placed upon Plaintiff in Plaintiff's part-time job are not necessarily equivalent to the requirements for substantial gainful activity. For example, as noted by the vocational expert, an individual performing Plaintiff's activities (working an eight hour day) but who missed approximately one day of work per week is not employable. *R. at 60-61.*

judgment as to the skill level and the current relevance of the individual's work experience.

Soc. Sec. Rep. Serv., Rulings 1975-1982, SSR 82-62 (West 1982). The ALJ must make specific factual findings detailing how the requirements of claimant's past relevant work fit the claimant's current limitations. The ALJ's findings must contain:

1. A finding of fact as to the individual's RFC.
2. A finding of fact as to the physical and mental demands of the past job/occupation.
3. A finding of fact that the individual's RFC would permit a return to his or her past job or occupation.

Soc. Sec. Rep. Serv., Rulings 1975-1982, SSR 82-62 (West 1982); Washington v. Shalala, 37 F.3d 1437, 1442 (10th Cir. 1994); Henrie v. United States Dep't of Health & Human Services, 13 F.3d 359, 361 (10th Cir. 1993). The ALJ failed to make the specific findings necessary to support the ALJ's conclusion that Plaintiff can perform his past relevant work.

The ALJ noted that Plaintiff "has worked as a counter man in an auto parts store since 1976 in spite of his impairments." *R. at 12*. However, Plaintiff is not engaged in substantial gainful activity, has been working only part-time since April 1991,^{12/} and Plaintiff testified that his difficulties have become increasingly worse.

Plaintiff's two RFC assessments indicate that Plaintiff is only able to lift between five and ten pounds frequently, and ten pounds occasionally. *R. at 75, 94*. Both RFC assessments also provide that Plaintiff can stand or walk for a total of "at least two hours," and, with normal breaks, sit for a total of "about six hours" in an

^{12/} Plaintiff testified that he will soon be forced to quit his part-time job. *R. at 56*.

eight hour day. *R. at 75, 94.* The record does not indicate whether these exertional limitations are in accord with the job requirements of Plaintiff's past work as a parts salesman.

The ALJ also did not address the medical report of Plaintiff's treating physician. Plaintiff's treating physician's report concludes that Plaintiff is unable, at this time, to sit, stand, or walk very far. *R. at 139.* The ALJ's decision does not address this report, and does not indicate the weight, if any, which the ALJ gave to the report. *R. at 11-14.*

Generally, a treating physician's opinion is accorded greater weight than that of an examining or reviewing physician. Williams v. Bowen, 844 F.2d 748, 750 (10th Cir. 1988). In addition, "[i]f the opinion of the treating physician is to be disregarded, specific, legitimate reasons for this action must be set forth." Turner v. Heckler, 754 F.2d 326, 329 (10th Cir. 1985). See also Goatcher v. United States Dep't of Health & Human Services, 52 F.3d 288, 290 (10th Cir. 1995); Frey v. Bowen, 816 F.2d 508, 513 (10th Cir. 1987); 20 C.F.R. § 404.1527 ("We will always give good reasons in our notice of determination or decision for the weight we give your treating source's opinion.").^{13/} The ALJ gave no reasons or indications as to why the treating physician's report was discounted.

^{13/} A treating physician's report may be disregarded when such a report is brief, conclusory, or unsupported by medical evidence. See, e.g., Frey v. Bowen, 816 F.2d 508, 513 (10th Cir. 1987). However, if an ALJ disregards a treating physician's report, specific and legitimate reasons must be given in the ALJ's decision. Id.

The record also contains testimony from a vocational expert.^{14/} The ALJ posed a hypothetical question to the vocational expert, inquiring whether an individual with Plaintiff's impairments could perform Plaintiff's past relevant work. The hypothetical included the following:

[an individual] with a twelfth grade education, [who] is 47 years of age, [and] has the past work history of the claimant in this case. The hypothetical individual has no non-exertional limitations such [as] pain, numbness or emotional limitations that would prevent him from working eight hours a day doing work which would be performed in either a normal or low-stress setting lifting up to 10 pounds frequently and up to 20 pounds occasionally. . . . The hypothetical individual can sit or stand at will, sit or stand intermittently, can walk occasionally and stand occasionally, cannot climb, balance, crouch, crawl or squat as these terms are customarily used to describe work posture positions in the work force. . . .

R. at 33-34. The vocational expert concluded that this hypothetical individual would be able to perform Plaintiff's past work as an auto parts salesman. However, the hypothetical posed to the vocational expert required the expert to assume that the individual was able to occasionally lift twenty pounds. In addition, the hypothetical fails to include potential sit/stand limitations. As noted above, the RFC assessments indicate Plaintiff is able to lift only ten pounds occasionally, stand or walk for at least two hours (in an eight hour day), and sit for at least six hours (in an eight hour day). The vocational expert's opinion cannot be relied upon due to the ALJ's failure to include these limiting factors in the hypothetical. See Hagis v. Sullivan, 945 F.2d 1482, 1491-92 (10th Cir. 1991).

^{14/} Inquiry of a vocational expert does not usually occur until step five.

The Court finds that the ALJ's decision that Plaintiff was capable of performing his past relevant work is not supported by substantial evidence. On remand, the ALJ should carefully examine the treating physician's opinion and determine what weight to give it. If the ALJ concludes that either an examining or consulting physician's opinion is entitled to greater weight, the ALJ should provide specific reasons for disregarding the treating physician's opinion. In addition, the ALJ should evaluate the record, given the weight the ALJ decides to give to the opinion of the treating physician, in determining whether Plaintiff is capable of performing his past relevant work. If the ALJ concludes that Plaintiff is capable of performing his past relevant work, the ALJ should detail Plaintiff's RFC,^{15/} the physical and mental demands of Plaintiff's past job, and Plaintiff's capability of performing Plaintiff's past job given Plaintiff's exertional and any non-exertional limitations.

If the ALJ concludes that Plaintiff is unable to perform his past work, the ALJ should proceed to determine whether or not Plaintiff is capable of performing other work (step 5). The ALJ should carefully formulate any hypothetical questions posed to a vocational expert to include all of Plaintiff's exertional and non-exertional limitations.

^{15/} The ALJ determined that Plaintiff is capable of performing "light work." *R. at 13*. ("Light work" requires "lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to ten pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. . . ." 20 C.F.R. § 404.1567(b).) As noted above, the ALJ failed to consider, or did not document, several of Plaintiff's exertional limitations in his determination.

Pain Evaluation

The legal standards for evaluating pain are outlined in 20 C.F.R. §§ 404.1529, 416.929, and were addressed by the Tenth Circuit Court of Appeals in Luna v. Bowen, 834 F.2d 161 (10th Cir. 1987). First, the asserted pain-producing impairment must be supported by objective medical evidence. Id. at 163. Second, assuming all the allegations of pain as true, a claimant must establish a nexus between the impairment and the alleged pain. "The impairment or abnormality must be one which 'could reasonably be expected to produce' the alleged pain." Id. Third, the decision maker, considering all of the medical data presented, and any objective or subjective indications of the pain must assess the claimant's credibility. In assessing a claimant's complaints of pain, the following factors may be considered.

For example, we have noted a claimant's persistent attempts to find relief for his pain and his willingness to try any treatment prescribed, regular use of crutches or a cane, regular contact with a doctor, and the possibility that psychological disorders combine with physical problems. The Secretary has also noted several factors for consideration including the claimant's daily activities, and the dosage, effectiveness, and side effects of medication.

Id. at 165.

In this case, the ALJ found that the Plaintiff's "statements regarding his impairments and the pain and discomfort he experiences are not persuasive." *R. at 13*. Credibility determinations by the trier of fact are given great deference. See, e.g., Hamilton v. Secretary of Health & Human Services, 961 F.2d 1495 (10th Cir. 1992). However, the Court cannot, from reviewing the ALJ's decision, ascertain whether or not the ALJ evaluated Plaintiff's complaints of pain in accordance with the

applicable regulations. See, e.g., *Huston v. Bowen*, 838 F.2d 1125, 1133 (10th Cir. 1988) ("Before finding that a claimant experiencing pain from a medically determinable impairment is not disabled, an ALJ must carefully consider all the relevant evidence, including subjective pain testimony, and **expressly reflect that consideration in the findings.**")(emphasis added). On remand, the ALJ should evaluate Plaintiff's complaints of pain in accordance with 20 C.F.R. §§ 404.1529, 416.929 and the standards outlined in *Luna v. Bowen*, 834 F.2d 161 (10th Cir. 1987).

Step 3: The Listings

Plaintiff additionally alleges error based on the ALJ's decision that Plaintiff does not have an impairment listed in or medically equal to the Listings (20 C.F.R. Pt. 404, Subpt. P, App. 1).^{18/} Listing 11.11 addresses anterior poliomyelitis with:

- A. Persistent difficulty with swallowing or breathing; or
- B. Unintelligible speech; or
- C. Disorganization of motor function as described in 11.04B.

20 C.F.R. Pt. 404, Subpt. P, App. 1, 11.11. Although Plaintiff was diagnosed with poliomyelitis, none of Plaintiff's medical records suggest that Plaintiff has any difficulty swallowing or breathing (subsection A), or unintelligible speech (subsection B). Plaintiff argues that the medical records substantiate 11.11C, or disorganization of motor functions.

Section 11.11C cross-references section 11.04, which provides:

[s]ignificant and persistent disorganization of motor function in two extremities, resulting in sustained

^{18/} If Plaintiff meets or equals an impairment in the Listings, Plaintiff is presumed disabled.

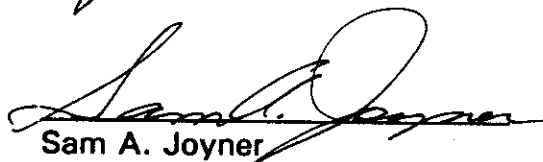
disturbance of gross and dexterous movements, or gait and station.

20 C.F.R., Pt. 404, Subpt. P, App. 1, § 11.04B. Plaintiff is unable to raise his right hand over his shoulder, and his right arm is 50% weaker than his left arm. Plaintiff's left arm is fully functional, and Plaintiff's dexterity is described as relatively normal. *R. at 147.* Plaintiff wears a knee brace on his left leg. Although Plaintiff is described as having a limp when he walks, two RFC assessments and a third doctor conclude that Plaintiff's walking is stable. *R. at 37, 76, 94, 147.* These conclusions are not contradicted by Plaintiff's treating physician. *R. at 138-40.* In addition, Dr. Lowell testified that Plaintiff did not meet or equal any Listings. *R. at 38, 40, 44-48.* The ALJ's decision was supported by substantial evidence, and it was not error to conclude that Plaintiff's medical impairments do not meet or equal the described impairments in Listing 11.11.

Accordingly, this case is **REVERSED** and **REMANDED** to the Secretary for further proceedings consistent with this order.

IT IS SO ORDERED.

Dated this 31 day of July 1995.


Sam A. Joyner
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE JUL 31 1995

CHARLES A. FIELDS,
Petitioner,
vs.
RON CHAMPION,
Respondent.

No. 94-C-440-K

FILED

JUL 31 1995

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Before the Court is Petitioner's notice of appeal filed on July 26, 1995. Petitioner desires to appeal the decision and order of this Court denying his petition for a writ of habeas corpus. Petitioner is proceeding in forma pauperis.

28 U.S.C. § 2253 requires a petitioner to obtain a certificate of probable cause before appealing a final order in a habeas corpus proceeding under 28 U.S.C. § 2254. To receive a certificate of probable cause, a petitioner must "make a 'substantial showing of the denial of [a] federal right.'" Lozada v. Deeds, 498 U.S. 430, 431 (1991) (per curiam) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)). A petitioner can satisfy this standard by demonstrating that the issues raised are debatable among jurists, that a court could resolve the issues differently, or that the questions deserve further proceedings. Barefoot, 463 U.S. at 893. The Tenth Circuit applies the same standard. See Gallagher v. Hannigan, 24 F.3d 68 (10th Cir. 1994); Stevenson v. Thornburgh, 943 F.2d 1214, 1216 (10th Cir. 1991).

After carefully considering the record in this case, the Court

concludes that a certificate of probable cause should not issue in this case because Petitioner has not made a substantial showing that he was denied a federal right. The record is devoid of any authority demonstrating that the Tenth Circuit Court of Appeals could resolve the issue differently.

ACCORDINGLY, IT IS HEREBY ORDERED that Petitioner's request for a certificate of probable cause (docket #25) is **denied**. See Fed. R. App. P. 22(b). Petitioner's motion for leave to proceed in forma pauperis is **denied as moot** (docket #25).

SO ORDERED THIS 28 day of July, 1995.


TERRY C. KEEN
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FARRELL L. INMAN,

Plaintiff,

vs.

CAREER EMPLOYMENT SERVICE,
INC.,

Defendant.

No. 94-C-01154 H

ENTERED ON DOCKET
DATE JUL 31 1995

FILED

JUL 31 1995
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA


STIPULATION FOR DISMISSAL

Pursuant to Fed. R. Civ. P. 41(a)(1), it is hereby stipulated by and between plaintiff and defendant that the above-captioned action should be and is hereby dismissed with prejudice as to the defendant.

Respectfully submitted,


JOHN L. HARLAN & ASSOCIATES, P.C.

By: 
Philard L. Rounds, Jr., OBA 7780
Attorney for Plaintiff


James W. Connor
Attorney for Defendant

CERTIFICATE OF MAILING

I, PHILARD L. ROUNDS, JR., do hereby certify that on the 28th day of ~~March~~ ^{July}, 1995, I mailed a true and correct copy of the above and foregoing instrument to James W. Connor, 416 East 5th Street, P. O. Drawer Z, Bartlesville, Oklahoma 74005-5025, by regular mail, with proper postage thereon fully prepaid.


Philard L. Rounds, Jr.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE JUL 31 1995

JAMES CROW,

Petitioner,

vs.

RONALD J. CHAMPION,

Respondent.

No. 95-C-629-K

FILED

JUL 31 1995

ORDER OF TRANSFER

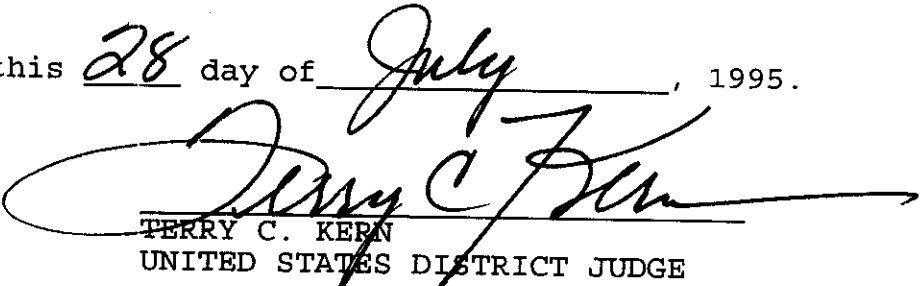
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Before the court is Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Upon review of the petition, it has come to the court's attention that Petitioner was convicted in Le Flore County, Oklahoma, which is located within the territorial jurisdiction of the Eastern District of Oklahoma. Therefore, in furtherance of justice, this matter may be more appropriately addressed in that district.

Accordingly, Petitioner's application for a writ of habeas corpus is hereby **transferred** to the Eastern District of Oklahoma for all further proceedings. See 28 U.S.C. § 2241(d). The Clerk shall **mail** a copy of the petition to the Attorney General's Office and to Petitioner.

IT IS SO ORDERED this 28 day of July, 1995.


TERRY C. KEEN
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STEPHEN S. OWEN,
Plaintiff,

vs.

LARRY FIELDS, and RONALD J.
CHAMPION,

Defendants.

No. 94-C-909-K

ENTERED ON DOCKET

DATE JUL 31 1995

FILED

JUL 31 1995

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JUDGMENT

In accord with the Order granting Defendants' motion for summary judgment, the Court hereby **enters judgment** in favor of all Defendants and against Plaintiff, Stephen S. Owen. Plaintiff shall take nothing on his claim. Each side is to pay its respective **attorney fees**.

SO ORDERED THIS 28 day of July, 1995.


PERRY C. KERN
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 31 1995

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

STEPHEN S. OWEN,
Plaintiff,

vs.

No. 94-C-909-K

LARRY FIELDS, et al,
Defendants.

ENTERED ON DOCKET
DATE JUL 31 1995

ORDER

In this prisoner's civil rights action, Plaintiff, a state inmate proceeding *pro se*, alleges that Defendants transferred him from general population to the Mental Health Unit of the Oklahoma Department of Corrections (DOC) in violation of his due process rights. Defendants have moved to dismiss or in the alternative for summary judgment on the basis of the court-ordered Martinez Report. Plaintiff has objected. For the reasons stated below, the Court construes Defendants' motion to dismiss as one for summary judgment and concludes that Defendants are entitled to judgment as a matter of law.

I. BACKGROUND

On August 18, 1994, Plaintiff's wife called the R.B. "Dick" Conner Correctional Center (DCCC) to inform prison officials that Plaintiff wanted to transfer to another facility because his life had been threatened by prison staff. When DCCC staff attempted to discover why Plaintiff felt endangered, Plaintiff refused to disclose any information. The following day, the Deputy Warden referred Plaintiff to the Psychological Assistant at DCCC for

evaluation. Since Plaintiff was prescribed 300 mg of Lithium twice a day for a Bipolar condition, the prison staff was concerned that the medication was not working. (Special Report, docket #5.)

After observation, the Psychological Assistant felt that Plaintiff could become delusional and could choose to act on delusions by escaping or harming others. As a result, in accordance with DOC policy, Plaintiff was scheduled for a screening for possible transfer to the Mental Health Unit. At the screening on August 22, 1994, Plaintiff refused to discuss any of his concerns with the psychological staff and denied that his wife had called the facility. Upon further review, however, the screening team recommended that Plaintiff remain in the general population to which Plaintiff returned later in the day. One month later, Plaintiff was transferred from DCCC to the John Lilley Correctional Center. (Special Report, docket #5.)

In September 1994, Plaintiff, filed the instant *pro se* civil rights action under 42 U.S.C. § 1983 naming as Defendants Larry Fields, Director of the Oklahoma Department of Corrections, and Ron Champion, Warden of DCCC.¹ Plaintiff alleges that his screening for possible transfer to the Mental Health Unit amounted to a transfer in violation of his due process rights. He further alleges he was transferred "as punishment to discredit Plaintiff after he talked with a special investigator." Plaintiff seeks compensatory damages for \$3,000,000 and punitive damages for an

¹Although Plaintiff refers to additional defendants in the body of his complaint, Plaintiff has failed to name these defendants as set out on page two of the complaint.

additional \$3,000,000 along with a transfer to a minimum security prison close to Tulsa or, in the alternative, for release from custody. (Complaint, docket #1.)

In their motion for summary judgment, Defendants argue Plaintiff has failed to demonstrate a due process violation, Plaintiff does not have a liberty interest involving out-patient screening, and Defendants complied with constitutional due process mandates and with DOC policy governing screening for possible transfer to the Mental Health Unit. (Docket #4.) Plaintiff responds that he was entitled to notice that the screening was in preparation for a possible transfer to the Mental Health Unit. He contends that he "was never given notice that on August 19, 1994, [he] was to speak with Psychological Assistant at DCCC . . . to determine if [the Plaintiff] should be referred . . . for placement at the . . . Mental Health Unit." He also contends that Defendants transferred him to the MHU "as a form of 'punitive sanctions' for his continued inquiries regarding the diminished amount of earned time credits he began [noticing] on his earned time reports." (Docket # 6.)

II. SUMMARY JUDGMENT STANDARDS

The court may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). When

reviewing a motion for summary judgment, the court must view the evidence in the light most favorable to the nonmoving party. Applied Genetics Int'l., Inc. v. First Affiliated Sec., Inc., 912 F.2d 1238, 1241 (10th Cir. 1990). "However, the nonmoving party may not rest on its pleadings but must set forth specific facts showing that there is a genuine issue for trial as to those dispositive matters for which it carries the burden of proof." Id. Although the court cannot resolve material factual disputes at summary judgment based on conflicting affidavits, Hall v. Bellmon, 935 F.2d 1106, 1111 (10th Cir. 1991), the mere existence of an alleged factual dispute does not defeat an otherwise properly supported motion for summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). Only material factual disputes preclude summary judgment; immaterial disputes are irrelevant. Hall, 935 F.2d at 1111. Similarly, affidavits must be based on personal knowledge and set forth facts that would be admissible in evidence. Id. Conclusory or self-serving affidavits are not sufficient. Id. If the evidence, viewed in the light most favorable to the nonmovant, fails to show that there exists a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. See Anderson, 477 U.S. at 250.

Where a pro se plaintiff is a prisoner, a court authorized "Martinez Report" (Report) prepared by prison officials may be necessary to aid the court in determining possible legal bases for relief for unartfully drawn complaints. See Hall, 935 F.2d at 1109. The court may treat the Martinez Report as an affidavit in

support of a motion for summary judgment, but may not accept the factual findings of the report if the plaintiff has presented conflicting evidence. Id. at 1111. The plaintiff's complaint may also be treated as an affidavit if it is sworn under penalty of perjury and states facts based on personal knowledge. Id. The court must also construe plaintiff's *pro se* pleadings liberally for purposes of summary judgment. Haines v. Kerner, 404 U.S. 519, 520 (1972).

III. ANALYSIS

After carefully reviewing the evidence in the light most favorable to Plaintiff, the Court concludes that Defendants are entitled to judgment as a matter of law. While Plaintiff has a constitutional right to notice and hearing under the Due Process Clause before being transferred to the Mental Health Unit, see Vitek v. Jones, 445 U.S. 480, 100 S.Ct. 1254 (1980), that right does not extend to the out-patient screening necessary to determine whether Plaintiff should be recommended for transfer to the Mental Health Unit for "in patient" psychiatric care.²

The DOC Mental Health Unit located at Joseph Harp Correctional Center provides placement and treatment for inmates diagnosed as having a psychotic disorder or dysfunction which precludes the inmate's ability to remain in the general prison population. DOC

²In Vitek, 445 U.S. 490-93, the Supreme Court held that it was not unusual for a prisoner to expect to be transferred to a mental health unit but that the "stigma" attached to such a transfer created a protected liberty interest to remain in the general population.

policy OP-14-127, entitled, "Health Services, Mental Health Unit," sets out the referral and screening procedures for inmates thought to be in need of treatment. Prior to being transferred to the Mental Health Unit each inmate is screened or evaluated. The screening committee at DCCC, which includes a psychiatrist, health services administrator and psychologist, evaluates the inmate to determine the inmate's need for acute psychiatric care, advises him of his possible transfer to the Mental Health Unit, and gives him an opportunity to be heard. Inmates are not transferred to the Mental Health Unit until they have been screened and accepted for treatment. In the event the inmate is not found to be in need of in-patient care, the inmate is returned to the general population. (Special Report.)

In the instant case, Plaintiff was not transferred to the Mental Health Unit. The screening committee found that Plaintiff was not in need of "in patient care" and returned him to the general population at DCCC on the same day. Any expectation Plaintiff may have had in remaining in general population at DCCC and not being screened for possible transfer to the Mental Health Unit is insubstantial to rise to the level of a due process violation. Therefore, the Court holds that Defendants complied with constitutional due process mandates and with DOC policy governing screening for possible transfer to the Mental Health Unit.

To the extent Plaintiff challenges his subsequent transfer to the John Lilley Correction Center on October 28, 1994, Defendants

would be entitled to judgment as a matter of law on that claim as well. Changing an inmate's prison classification ordinarily does not deprive him of a liberty interest, because he is not entitled to a particular degree of liberty in prison. See Meachum v. Fano, 427 U.S. 215, 225 (1976) (explaining that the Due Process Clause does not protect a prisoner against transfer to another prison, even if more restrictive); Kincaid v. Duckworth, 689 F.2d 702, 704 (7th Cir. 1982), cert. denied, 461 U.S. 946 (1983); see also Ruark v. Solano, 928 F.2d 947, 949 (10th Cir. 1991) (because an inmate has no right to confinement in a particular institution, "[h]e cannot complain of deprivation of his 'right' in violation of due process"); Twyman v. Crisp, 584 F.2d 352 (10th Cir. 1978). Additionally, federal courts do not interfere in classification and placement decisions. Such decisions are entrusted to the broad discretion of prison administrators, not to the federal courts. Moody v. Daggett, 429 U.S. 78, 88 n.9 (1971); Meachum, 427 U.S. at 228; Hewitt v. Helms, 459 U.S. 460, 467-68 (1983); Wilkerson v. Maggio, 703 F.2d 909, 911 (5th Cir. 1983); Twyman, 584 F.2d at 356-57.

In the alternative, the Court holds that Defendants would be entitled to qualified immunity in their individual capacity and to eleventh amendment immunity in their official capacity. As noted above, Plaintiff's screening for possible transfer to the Mental Health Unit complied with due process standards and the Plaintiff has not shown that Defendants in their individual capacity violated any clearly established federal rights. Harlow v. Fitzgerald, 457

U.S. 800 (1982). To the extent that Plaintiff has sued Defendants in their official capacity, Defendants are not proper "person[s]" within the meaning of section 1983. Wallace v. Oklahoma, 721 F.2d 301, 303-04 (10th Cir. 1983).

III. CONCLUSION

After viewing the evidence in the light most favorable to Plaintiff, the Court concludes that Defendants have made an initial showing negating all disputed material facts, that Plaintiff has failed to controvert Defendants' summary judgment evidence, and that Defendants are entitled to judgement as a matter of law.

ACCORDINGLY, IT IS HEREBY ORDERED that Defendants' motion to dismiss for failure to state a claim (doc. #⁴1) is denied and that Defendants' motion for summary judgment (doc. #⁴2) is granted.

SO ORDERED THIS 28 day of July, 1995.


TERRY C. KEEN
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 28 1995

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

KATHERYN STALEY,

Plaintiff,

v.

DONNA E. SHALALA,
Secretary of HHS

Defendant.

NO. 93-C-1134-M

ENTERED ON DOCKET

DATE JUL 31 1995

JUDGMENT

Judgment is hereby entered for the Plaintiff and against Defendant. Dated this 28 day
of July, 1995.

Frank H. McCarthy
FRANK H. MCCARTHY
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JUL 28 1995

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

KATHERYN STALEY,

Plaintiff,

v.

NO. 93-C-1134-M

DONNA E. SHALALA¹
Secretary of HHS,

Defendant.

ENTERED ON DOCKET
DATE JUL 31 1995

ORDER

Plaintiff, Kathryn Staley, seeks judicial review of a decision of the Secretary of Health & Human Services denying Social Security disability benefits.² In accordance with 28 U.S.C. §636(c) the parties have consented to proceed before the undersigned United States Magistrate Judge, any appeal of this decision will be directly to the Circuit Court of Appeals.

BACKGROUND

Ms. Staley, who was 40 years old at the time of her application, has a General Equivalency Diploma (GED), 60 hours of credit from Tulsa Junior College and a clerk/typist certificate from a business school [R. 56-7]. She has not been engaged in substantial gainful employment activity since May of 1991 [R. 57]. Most recently she had been employed as a

¹ Effective March 31, 1995, the functions of the Secretary of Health and Human Services in social security cases were transferred to the Commissioner of Social Security. P.L. No. 103-296. However, this Order continues to refer to the Secretary because she was the appropriate party at the time of the underlying decision.

² Ms. Staley's August 20, 1991 application for disability benefits was denied November 18, 1991, the denial was affirmed on reconsideration. A hearing before an Administrative Law Judge was held April 27, 1992. By decision dated July 12, 1992 the ALJ entered the findings that are the subject of this appeal. The Appeals Council affirmed the findings of the ALJ on December 1, 1992. The decision of the Appeals Council represents the Secretary's final decision for purposes of further appeal. 20 C.R.R. §§ 404.981, 416.1481.

production technician putting components on computer boards [Id.]. She has also worked as a credit clerk, beverage inspector, and food preparation line worker [R. 116]. Ms. Staley claims she is disabled within the meaning of the Social Security Act and has been under a disability since May 31, 1991, as a result of diarrhea related to Crohn's disease as well as two mitral valve replacements, depression, anxiety, and migraine headaches.

Ms. Staley's medical records reflect a lengthy history of treatment for Crohn's disease which was apparently diagnosed as early as 1977 [R. 320]. Throughout the medical records her physicians have reported continuing complaints of diarrhea involving a number of stools per day varying from 3 to 4 [R. 319, 316], 4 to 10 [R. 297], 8 to 10 [R. 316, 317, 320], 10 to 20 [R. 319] and 27 in one day [R. 317]. However, the diarrhea is not a constant problem. At various points throughout the medical records there are reports that it is intermittent [R. 295, 296] and that stress or some food will precipitate it [R. 308, 302]. The records also indicate that Ms. Staley has twice had her mitral valves replaced and that she suffers from occasional migraine headaches [R. 211, 296, 302, 316]. In addition, Ms. Staley has been treated by a psychiatrist, Merli Fermo, M.D. Dr. Fermo's records reflect that Ms. Staley has had difficulty coping with the death of her son and with her marriage to a possessive husband who does not want her to work [R. 399-402].

On behalf of the Secretary, an Administrative Law Judge (ALJ) concluded that:

- (1) Plaintiff does not have an impairment, or combination of impairments, listed in or medically equal to one listed in 20 CFR pt. 404, Subpt. P, App. 1;
- (2) The pain Plaintiff suffers is not incapacitating so as to preclude employment;

- (3) Plaintiff has the residual functional capacity to perform work related activities within the light exertional activity level;
- (4) Plaintiff's impairments do not prevent her from performing her past relevant work as a credit clerk;
- (5) Plaintiff is not disabled and has not been disabled as defined in the Social Security Act at any time through the date of the decision.

Ms. Staley argues that the ALJ improperly rejected the mental residual functional capacity (RFC) assessment by her treating psychiatrist in favor of the assessments by the consultative physicians; that the ALJ failed to take in to account the limiting effects of Ms. Staley's chronic diarrhea; and that the finding that Ms. Staley can return to her past relevant work as a credit clerk is not supported by substantial evidence.

ROLE OF REVIEWING COURT

The role of the court in reviewing the decision of the Secretary under 42 USC § 405(g) is to determine whether there is substantial evidence in the record to support the decision of the Secretary, and not to reweigh the evidence or try the issues *de novo*. *Sisco v. U.S. Dept. of Health and Human Services*, 10 F.3d 739, 741 (10th Cir. 1993). If supported by substantial evidence, the Secretary's findings are conclusive and must be affirmed. *Richardson v. Perales*, 402 U.S. 389, 390, 91 S.Ct. 1420, 1422, 28 L.Ed.2d 842, (1971). Substantial evidence is more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* at 401, 91 S.Ct. at 1427.

FIVE-STEP INQUIRY

In order to determine whether a claimant is under a disability, the Secretary applies a five-step inquiry: (1) whether the claimant is currently working; (2) whether the claimant suffers

from a medically severe impairment; (3) whether the impairment meets an impairment listed in appendix 1 of the relevant regulation; (4) whether the impairment prevents the claimant from continuing his or her past relevant work; and (5) whether the impairment prevents the claimant from doing any kind of work. 20 C.F.R. §§ 404.1520(c), 416.920(c); see *Williams v. Bowen*, 844 F.2d 748, 751 (10th Cir. 1988). If at any point in the process the Secretary finds that a person is disabled or not disabled, the review ends and evaluation under a subsequent step is not necessary. *Musgrave v. Sullivan*, 966 F.2d 1372, 1374 (10th Cir. 1992).

In the present case step-one (whether claimant is currently working) is satisfied as Ms. Staley is not presently working. Step-two (whether claimant suffers from a medically severe impairment) is based on medical evidence alone and is satisfied where Plaintiff makes a threshold showing that her medically determinable impairment, or combination of impairments, significantly limits her ability to do basic work activities. *Williams*, 844 F.2d at 750-751. In this case the ALJ noted, with some detail, that the medical records revealed the existence of Crohn's disease, mitral valve replacement, anxiety, depression, and migraine headaches which are expected to interfere with work-related activities [R. 16]. The evaluation proceeded to step-three where the ALJ determined that the Ms. Staley's impairments do not meet or equal the requirements of any listed impairment found in 20 CFR pt.404, Subpt.P, App. 1. The ALJ noted that he placed special emphasis upon sections 4.04, 5.06, 12.04 and 12.06 at this stage of the analysis [R. 16-24].

The next step involves a determination whether, despite Plaintiff's impairments, she retains the ability to perform past relevant work. In accordance with *Luna v. Bowen*, 834 F.2d 161 (10th Cir. 1987), the ALJ considered the medical records and Ms. Staley's subjective

complaints of pain. The ALJ concluded that Ms. Staley's pain and discomfort is not incompatible with the performance of sustained work activity. [R. 27]. In particular, the ALJ noted that Ms. Staley's past relevant work as a credit clerk is rated as a sedentary occupation. She has a residual functional capacity for light work, which includes her past relevant work. Therefore, the ALJ found that Ms. Staley is able to engage in her past relevant work. The ALJ also heard testimony of a vocational expert who, based on a hypothetical question incorporating the ALJ's findings concerning Ms. Staley's impairments, testified that she can perform her past work as credit clerk [R. 28; 89]. Based on this analysis of the record and the testimony of the vocational expert, the ALJ determined that Ms. Staley is not disabled.

LIMITING EFFECTS OF CHRONIC DIARRHEA

Ms. Staley claims that the ALJ improperly excluded the limiting effects of the chronic diarrhea from his analysis. However, the ALJ specifically acknowledged the effects of Ms. Staley's Crohn's disease but found that the discomfort was not so great as to preclude all types of work activity [R. 27]. In addition, the ALJ's questioning of the vocational expert included the requirement of readily available restrooms [R. 29]. Furthermore, the medical record reflects that Ms. Staley's problems with diarrhea have existed for years [R. 320]. And, despite her diarrhea problems, she has maintained employment in the past. A longstanding impairment which has not dramatically changed since a time period when claimant was working should not be the basis for an award of benefits. *Johnson v. Finch*, 437 F.2d 1321 (10th Cir. 1971). Further, the hearing record reflects that, after taking medication, Ms. Staley was able to sit through the hearing from 8:43 a.m. to 10:11 a.m. without needing to use the restroom [R. 48, 95, 96]. An impairment which can be reasonably controlled with medication is not disabling

within the meaning of the Act. *Pacheco v. Sullivan*, 931 F.2d 695, 698 (10th Cir.1991), *Teter v. Heckler*, 775 F.2d 1104, 1107 (10th Cir. 1985). The Court finds that the ALJ properly evaluated Ms. Staley's diarrhea.

REJECTION OF TREATING PHYSICIAN'S ASSESSMENT

Ms. Staley claims that the ALJ inappropriately rejected the mental capacity assessment completed by her treating psychiatrist, Dr. Fermo, in favor of one prepared by the consultive psychiatrist. It is well-established that, unless good cause is shown to the contrary, the Secretary must give substantial weight to the testimony of claimant's treating physician. If the opinion of a treating physician is to be disregarded, specific, legitimate reasons for this action must be set forth. *Byron v. Heckler*, 742 F.2d 1232, 1235 (10th Cir. 1984), *Sorensen v. Bowen*, 888 F.2d 706, 711 (10th Cir. 1989).

In this case, the ALJ stated that he relied heavily on the physical examination conducted by consultive physician Dr. E. Joseph Sutton [R. 272-282]. The ALJ noted that nothing in the medical record significantly contradicts the findings of the Disability Determination Unit staff physicians or those of Dr. Sutton. Concerning Ms. Staley's mental ability to perform work, the ALJ relied on the opinion of consultive physician, Dr. Inbody, rather than Ms. Staley's treating psychiatrist, Dr. Fermo.

Dr. Fermo prepared an assessment of Ms. Staley's mental ability to perform work related activities in which she based her opinions concerning Ms. Staley's *mental* abilities on her *physical* complaints of diarrhea, rather than on mental complaints [R. 405-407]. Even though Dr. Fermo is a medical doctor, there is nothing in the record to suggest that Dr. Fermo based her assessment on anything other than subjective statements provided by Ms. Staley. The office

records submitted by Dr. Fermo along with her assessment do not contain any objective evidence or findings to support Dr. Fermo's assessment of Ms. Staley's physical, or mental, ability to perform work. However, Dr. Sutton's assessment of Ms. Staley's physical abilities is supported by his examination of her. His opinion is backed by objective observations and findings which are lacking in Dr. Fermo's assessment. Dr. Fermo's stated reason for making performance adjustments in Ms. Staley's rating was that she was anxious and depressed and became forgetful. The ALJ specifically noted that this finding was not objectively corroborated in the rest of the medical evidence. Further, based on his *clinical* examination, Dr. Inbody found Ms. Staley to have no difficulty with memory. The ALJ stated that he relied upon Dr. Inbody's opinion concerning Ms. Staley's mental ability to perform work over Dr. Fermo's because Dr. Inbody's opinion is based more on her mental complaints and diagnosis and not on her physical ones.

According to Ms. Staley the ALJ's reasons for rejecting Dr. Fermo's assessment do not satisfy the requirements of *Reyes v. Bowen*, 845 F.3d 242 (10th Cir. 1988) and *Byron*, *supra*. This Court finds that they do. Dr. Fermo's assessment suffers from the same infirmity that the opinions of consultive physicians often do: the assessment appears to have been filled out without any explanation or *objective* basis for the conclusions and without any evidence of any examination of the claimant that would support such conclusions. In *Gatson v. Bowen*, 838 F.2d 442, 448 (10th Cir. 1988), the Court noted the "suspect reliability" of RFC forms when they are filled out without explanation for the basis for the conclusions and without *evidence* of any examination of the claimant. The Court therefore finds that the ALJ's reliance on the assessments of Doctors Sutton and Inbody over Dr. Fermo was reasonable.

ANALYSIS OF PLAINTIFF'S MENTAL CONDITION

Recent Tenth Circuit case law mandates a finding that the ALJ's analysis of Ms. Staley's mental condition was inadequate. In *Cruse v. U.S. Dept. of Health & Human Services*, 49 F.3d 614 (10th Cir 1995), the Court was critical of the use of the "Medical Assessment of Ability To Do Work-Related Activities (Mental)" forms which were employed in this case. The factors evaluated on the "Mental Assessment" forms do not match the four requirements of § 12.04, the listing for affective disorders.

To meet the listing requirements under the Part B criteria regarding the severity of the impairment, the condition or impairment must result in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Frequent deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation (decompensation) or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors). 20 C.F.R. Pt. 404, Subpt. P, App.1, §12.04 B.

However, the "Mental Assessment" forms ask for evaluations of claimant's abilities in three work-related areas: making occupational adjustments, making performance adjustments, and making personal-social adjustments. Then, rather than evaluating the severity of a claimant's functional impairments using the same terms as the listing requirements, the mental assessment forms evaluate the claimant's abilities as "unlimited/very good," "good," "fair," and "poor or none." The terms have specialized meanings defined on the form [R. 287]. Of particular

concern, is the term "fair." Describing a functional ability as "fair" would seem to imply no disabling impairment, however, "fair" is defined to mean: "Ability to function in this area is seriously limited but not precluded" [R. 287]. The *Cruse* Court concluded that "seriously limited but not precluded" is essentially the same as the listing requirements' definition of the term "marked". *Cruse*, 49 F.3d at 618. "Marked" is defined at § 12.00 C:

Where "marked" is used as a standard for measuring the degree of limitation, it means more than moderate, but less than extreme. A marked limitation may arise when several activities or functions are impaired or even where only one is impaired, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately and effectively.

In *Cruse*, the Court found that use of the term "fair" as it is defined on the medical assessment form is evidence of *disability*. *Cruse*, at 618.

Looking at Dr. Inbody's assessment in that light, there appears to be evidence that Ms. Staley meets the listing requirements. For example, under §12.00C deficiencies in concentration, persistence and pace "refer to the ability to sustain focused attention sufficiently long to permit the timely completion of tasks commonly found in work settings." Dr. Inbody found Ms. Staley to have seriously limited ("fair") abilities to deal with work stresses, function independently, and maintain attention/concentration. Equating "fair abilities" to "marked limitations" as required by *Cruse*, suggests that Ms. Staley may meet this requirement of the part B criteria for listing 12.04.

Under the listings, deterioration of decompensation "refers to repeated failure to adapt to stressful circumstances which cause the individual either to withdraw from that situation or to experience exacerbation of signs and symptoms (i.e., decompensation) with an accompanying difficulty in maintaining activities of daily living, social relationships and/or maintaining

concentration, persistence, or pace (i.e., deterioration . . .). Stresses common to the work environment include decisions, attendance, schedules, completing tasks, interactions with supervisors, interactions with peers, etc." According to Dr. Inbody, Ms. Staley's abilities to relate with co-workers, deal with the public, use judgment with the public, behave in an emotionally stable manner, relate predictably in social situations, and generally deal with work stresses were seriously limited ("fair") [R. 287-8]. The listing expresses this criteria in terms of "repeated episodes of deterioration" which does not translate to the mental assessment form's "fair" rating.³ Despite this difficulty, the Court notes that Dr. Inbody's "fair" rating in relation to the ability to relate predictably, deal with work stress and behave in an emotionally stable manner indicate a seriously limiting impairment in this area. The criteria and terminology in the mental assessment form differ from the listing to a degree that the Court cannot determine whether the ALJ's conclusion that Ms. Staley does not meet the listing requirements is supported by substantial evidence.⁴

Accordingly, the case is REMANDED for further consideration of Ms. Staley's mental impairments in relation to the listing requirements and her ability to perform work.

SO ORDERED THIS 28th DAY OF JULY, 1995.


FRANK H. MCCARTHY
UNITED STATES MAGISTRATE JUDGE

³ See Cruse, 49 F.3d at 619, n. 3 for discussion of difficulty in correlating the mental assessment forms to the listing criteria.

⁴ The Court notes that the terminology employed to express the standard of review for Social Security disability appeals is susceptible of creating similar semantic difficulties. The requirement that the ALJ's decision be supported by substantial evidence would seem to require overwhelming or convincing evidence, but that is not the case. A better description of the substantial evidence standard may be that the Secretary's decision must be affirmed if supported by evidence that is not insubstantial.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 27 1995

Richard A. Joyner, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

MARY EVANS,

Plaintiff,

v.

No. 93-C-188-J

SHIRLEY S. CHATER, Commissioner of
Social Security,^{1/}

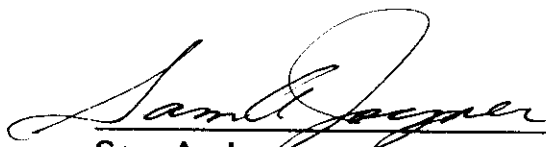
Defendant.

ENTERED ON DOCKET
DATE JUL 31 1995

ORDER REMANDING CASE TO ALJ

Pursuant to the mandate of the United States Court of Appeals for the Tenth Circuit (appeal number 94-5163), the above-referenced matter is **REMANDED** to the appropriate Administrative Law Judge for further proceedings consistent with the Court of Appeals' Order and Judgment entered May 19, 1995.

It is so ordered this 27 day of July, 1995.


Sam A. Joyner
United States Magistrate Judge

^{1/} Effective March 31, 1995, the functions of the Secretary of Health and Human Services in social security cases were transferred to the Commissioner of Social Security. P.L. No. 103-296. Pursuant to Fed.R.Civ.P. 25(d)(1), Shirley S. Chater, Commissioner of Social Security, is substituted for Donna E. Shalala, Secretary of Health and Human Services, as the Defendant in this action. Although the Court has substituted the Commissioner for the Secretary in the caption, the text of this Order will continue to refer to the Secretary because she was the appropriate party at the time of the underlying decision.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CAROLE E. LEGGETT,

Plaintiff,

vs.

DONNA E. SHALALA, SECRETARY
OF HEALTH AND HUMAN SERVICES,

Defendant.

ENTERED ON DOCKET

DATE JUL 31 1995

No. 93-C-0704-K

FILED

JUL 31 1995

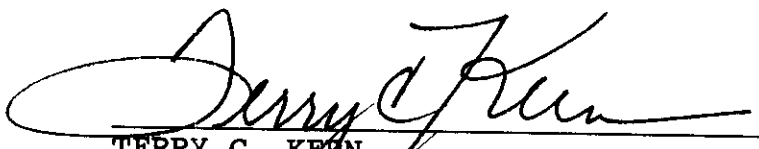
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

J U D G M E N T

This matter came before the Court for consideration of the appeal of Plaintiff, Carole E. Leggett, to the Secretary's denial of Social Security disability benefits. The issues having been duly considered, a decision having been rendered, and in accordance with the Order entered March 3, 1995, affirming the Secretary's decision,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment is hereby entered for Defendant and against the Plaintiff.

IT IS SO ORDERED THIS 28 DAY OF JULY, 1995.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
on behalf of Rural Housing
and Community Development Service,
formerly known as the
Farmers Home Administration,

Plaintiff,

v.

JERRY W. GALLATIN
aka Jerry Gallatin
aka Jerry Wayne Gallatin;
JEWEL A. GALLATIN
fka Jewel A. DiDomenico;
TRECA KAY GALLATIN
aka Treca K. Gallatin
aka Treca Gallatin;
SPOUSE, if any, of Treca Kay
Gallatin;
COUNTY TREASURER, Osage County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Osage County, Oklahoma,

Defendants.

ENTERED ON DOCKET

DATE JUL 31 1995

FILED

JUL 28 1995

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CIVIL ACTION NO. 95-C-306-K

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28 day of July,
1995. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern
District of Oklahoma, through Phil Pinnell, Assistant United States Attorney; the Defendants,
County Treasurer, Osage County, Oklahoma, and Board of County Commissioners,
Osage County, Oklahoma, appear by John S. Boggs, Jr., Assistant District Attorney, Osage
County, Oklahoma; and the Defendants, Jerry W. Gallatin aka Jerry Gallatin aka Jerry
Wayne Gallatin, Jewel A. Gallatin fka Jewel A. DiDomenico, Treca Kay Gallatin aka

NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT

Treca K. Gallatin aka Treca Gallatin nka Treca Kay Horton, and Spouse of Treca Kay Gallatin who is one and the same person as Danny L. Horton, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, **Jerry W. Gallatin aka Jerry Gallatin aka Jerry Wayne Gallatin**, executed a Waiver of Service of Summons on April 14, 1995 which was filed on April 25, 1995; that the Defendant, **Jewel A. Gallatin fka Jewel A. DiDomenico**, executed a Waiver of Service of Summons on April 14, 1995 which was filed on April 25, 1995; that the Defendant, **Treca Kay Gallatin aka Treca K. Gallatin aka Treca Gallatin nka Treca Kay Horton**, executed a Waiver of Service of Summons on April 16, 1995 which was filed on April 25, 1995; and that the Defendant, **Spouse of Treca Kay Gallatin, who is one and the same person as Danny L. Horton**, executed a Waiver of Service of Summons on April 16, 1995 which was filed on April 25, 1995.

It appears that the Defendants, **County Treasurer, Osage County, Oklahoma, and Board of County Commissioners, Osage County, Oklahoma**, filed their Answer on or after April 19, 1995; that the Defendants, **Jerry W. Gallatin aka Jerry Gallatin aka Jerry Wayne Gallatin, Jewel A. Gallatin fka Jewel A. DiDomenico, Treca Kay Gallatin aka Treca K. Gallatin aka Treca Gallatin nka Treca Kay Horton, and Spouse of Treca Kay Gallatin who is one and the same person as Danny L. Horton**, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, **Treca Kay Gallatin aka Treca K. Gallatin aka Treca Gallatin**, is now known as **Treca Kay Horton**.

The Court further finds that the Defendant, Spouse, if any, of Treca Kay Gallatin, is one and the same person as Danny L. Horton.

The Court further finds that on June 17, 1992, Jerry Wayne Gallatin and Treca Kay Gallatin filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 92-02139-W. On November 13, 1992, a Discharge of Debtor was entered releasing debtors of all dischargeable debts. Subsequently, Case No. 92-02139-W, United States Bankruptcy Court, Northern District of Oklahoma, was closed on February 10, 1993.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Osage County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot 8, Block 2, Northern Heights Addition to Hominy, Osage County, Oklahoma, according to the recorded Plat thereof. Subject, however, to all valid outstanding easements, rights-of-way, mineral leases, mineral reservations, and mineral conveyances of record.

The Court further finds that on December 19, 1980, Jerry W. Gallatin and Treca Kay Gallatin executed and delivered to the United States of America, acting through the Farmers Home Administration, now known as Rural Housing and Community Development Service, their promissory note in the amount of \$35,000.00, payable in monthly installments, with interest thereon at the rate of 12 percent per annum.

The Court further finds that as security for the payment of the above-described note, Jerry W. Gallatin and Treca Kay Gallatin executed and delivered to the United States of America, acting through the Farmers Home Administration, now known as Rural Housing

and Community Development Service, a real estate mortgage dated December 19, 1980, covering the above-described property, situated in the State of Oklahoma, Osage County. This mortgage was recorded on December 19, 1980, in Book 591, Page 617, in the records of Osage County, Oklahoma.

The Court further finds that Jerry W. Gallatin aka Jerry Gallatin and Treca K. Gallatin aka Treca Gallatin executed and delivered to the United States of America, acting through the Farmers Home Administration, now known as Rural Housing and Community Development Service, the following Interest Credit Agreements pursuant to which the interest rate on the above-described note and mortgage was reduced.

Instrument	Date	Signature
Interest Credit Agreement	02/01/83	Jerry W. Gallatin Treca K. Gallatin
Interest Credit Agreement	08/28/84	Jerry W. Gallatin Treca K. Gallatin
Interest Credit Agreement	03/17/86	Jerry Gallatin Treca K. Gallatin
Interest Credit Agreement	05/19/86	Jerry W. Gallatin Treca K. Gallatin
Interest Credit Agreement	03/09/87	Jerry Gallatin Treca Gallatin
Interest Credit Agreement	03/16/88	Jerry W. Gallatin Treca Gallatin
Interest Credit Agreement	03/03/89	Jerry W. Gallatin Treca K. Gallatin
Interest Credit Agreement	03/14/90	Jerry W. Gallatin Treca K. Gallatin

The Court further finds that the Defendants, **Jerry W. Gallatin aka Jerry Gallatin aka Jerry Wayne Gallatin and Treca Kay Gallatin aka Treca K. Gallatin aka Treca Gallatin nka Treca Kay Horton**, made default under the terms of the aforesaid note, mortgage and interest credit agreements by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, **Jerry W. Gallatin aka Jerry Gallatin aka Jerry Wayne Gallatin and Treca Kay Gallatin aka Treca K. Gallatin aka Treca Gallatin nka Treca Kay Horton**, are indebted to the Plaintiff in the principal sum of \$32,739.43, plus accrued interest in the amount of \$13,018.41 as of March 6, 1995, plus interest accruing thereafter at the rate of 12 percent per annum or \$10.7636 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the interest credit agreements of \$14,294.49, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of \$8.00 fee for recording Notice of Lis Pendens.

The Court further finds that the Defendants, **County Treasurer, Osage County, Oklahoma and Board of County Commissioners, Osage County, Oklahoma**, have a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$196.63, plus penalties and interest, for the year 1994. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, **County Treasurer, Osage County, Oklahoma and Board of County Commissioners, Osage County, Oklahoma**, have liens on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$37.91, plus penalties and interest, which became liens on

the property as of 1993 (\$23.47) and 1994 (\$14.44). Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, **Jerry W. Gallatin aka Jerry Gallatin aka Jerry Wayne Gallatin, Jewel A. Gallatin fka Jewel A. DiDomenico, Treca Kay Gallatin aka Treca K. Gallatin aka Treca Gallatin nka Treca Kay Horton, and Spouse of Treca Kay Gallatin** who is one and the same person as **Danny L. Horton**, are in default and therefore have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of Rural Housing and Community Development Service, formerly known as the Farmers Home Administration, have and recover judgment in rem against the Defendants, **Jerry W. Gallatin aka Jerry Gallatin aka Jerry Wayne Gallatin and Treca Kay Gallatin aka Treca K. Gallatin aka Treca Gallatin nka Treca Kay Horton**, in the principal sum of \$32,739.43, plus accrued interest in the amount of \$13,018.41 as of March 6, 1995, plus interest accruing thereafter at the rate of 12 percent per annum or \$10.7636 per day until judgment, plus interest thereafter at the current legal rate of 5.70 percent per annum until paid, and the further sum due and owing under the interest credit agreements of \$14,294.49, plus interest thereafter at the current legal rate of 5.70 percent per annum until paid, plus the costs of this action in the amount of \$8.00 fee for recording Notice of Lis Pendens, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property and any other advances.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer, Osage County, Oklahoma and Board of County Commissioners, Osage County, Oklahoma, have and recover judgment in the amount of \$196.63, plus penalties and interest, for ad valorem taxes for the year 1994, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer, Osage County, Oklahoma and Board of County Commissioners, Osage County, Oklahoma, have and recover judgment in the total amount of \$37.91 for personal property taxes for the years 1993 (\$23.47) and 1994 (\$14.44), plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Jerry W. Gallatin aka Jerry Gallatin aka Jerry Wayne Gallatin, Jewel A. Gallatin fka Jewel A. DiDomenico, Treca Kay Gallatin aka Treca K. Gallatin aka Treca Gallatin nka Treca Kay Horton, and Spouse of Treca Kay Gallatin who is one and the same person as Danny L. Horton, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Jerry W. Gallatin aka Jerry Gallatin aka Jerry Wayne Gallatin and Treca Kay Gallatin aka Treca K. Gallatin aka Treca Gallatin nka Treca Kay Horton, to satisfy the in rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him

to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Defendants, County Treasurer, Osage County, Oklahoma and Board of County Commissioners, Osage County, Oklahoma, for ad valorem taxes;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;

Fourth:

In payment of the judgment rendered herein in favor of the Defendants, County Treasurer, Osage County, Oklahoma and Board of County Commissioners, Osage County, Oklahoma, for personal property taxes.


The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.


s/ TERRY C. KERN
UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



JOHN S. BOGGS, JR., OBA #0920
Assistant District Attorney
Osage County Courthouse
Pawhuska, Oklahoma 74056
(918) 287-1510
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Osage County, Oklahoma

Judgment of Foreclosure
Case No. 95-C-306-K

PP:css

ENTERED ON DOCKET
JUL 31 1995

DATE 11/1/68

No. 93-C-1036-K

FILED

JUL 2 1995

ORDER

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

I. Attorney Fees

The Civil Rights Attorney's Fees Award Act of 1976 confers discretion upon district courts to award fees to a prevailing party in a civil rights action. 42 U.S.C. § 1988. The purpose of § 1988 is to encourage private enforcement of the Civil Rights Act and to provide private citizens with "a meaningful opportunity to

vindicate the important Congressional policies which these laws contain." S.Rep. No. 94-1011 at 2, U.S.C.C.A.N. at 5910. Congress found the remedy of attorneys' fees to be an integral part of the remedy necessary to achieve compliance with [the] statutory policies and thus recoverable absent special circumstances. Id. at 4.

A. Lodestar Calculation

The Supreme Court and the circuit courts have, in recent years, adopted a standard method for determining appropriate fee-shifting by use of the lodestar calculation. The lodestar figure is "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S. Ct. 1933, 1939 (1983). Once the lodestar is determined, the courts may look at other factors, such as the results obtained, to adjust that figure either in an upward or downward direction.

On July 13, 1995, the Court held a five-hour hearing to discuss a reasonable hourly rate and the number of hours spent in litigating this dispute. For the hourly lodestar rate, Plaintiff seeks compensation at a rate of \$200 for Tom Seymour, lead counsel in the case, \$110 for Randolph Lynn, an Associate of Mr. Seymour, and \$85 for Todd Willhoite, an attorney in Claremore, Oklahoma who originally handled the case. The number of hours claimed are 451.9 for Mr. Seymour, 599.1 for Mr. Lynn, and 59.4 for Mr. Willhoite.

With regard to the reasonable hourly rate, the lawyer's customary fee is relevant but not conclusive. Ramos v. Lamm, 713

F.2d 546 (10th Cir. 1983). The fee should be determined by giving consideration to the customary fee for similar work in the community for attorneys of like skill and experience. The Court should establish, from the information provided to it and from its own analysis of the level of performance and skills of the lawyers to be compensated, billing rates for each lawyer based upon the norm for private firm lawyers in the area in which the court sits calculated as of the time the court awards fees.

Plaintiff cites the Court to twelve factors to use to assist it in calculating a reasonable hourly rate. See Johnson v. Georgia Highway Express, 488 F.2d 714 (5th Cir. 1974). These factors include the time and labor required, novelty and difficulty of issues, skill required to perform service properly, preclusion of other employment due to case, customary fee, whether fee is mixed or contingent, time limitations imposed by client or circumstances, amount involved and results obtained, experience and reputation of attorney, undesirability of case, nature and length of professional relationship with client, and awards in similar cases. However, most of these factors are already subsumed in the calculation of the lodestar figure. Moreover, certain other factors, such as whether or not the fee is fixed or contingent, cannot be considered in determining a reasonable fee in light of the Supreme Court case of City of Burlington v. Dague, --U.S.--, 112 S.Ct 2638, 2641 (1992).¹

¹ Justice Scalia wrote in Dague that contingency enhancements would make the setting of fees more complex and arbitrary, hence more unpredictable and litigable. 112 S.Ct. at

At the hearing, Plaintiff presented substantial evidence demonstrating that a fee of \$200 per hour for Mr. Seymour was reasonable in the community for work he performed. Plaintiff argued that there was no "market rate" for this specific type of work, meaning § 1983 civil rights lawsuits, in the community. Evidently, Defendants agreed, since none of their witnesses testified to a "market rate" for work similar to the case at hand. In light of the testimony at the hearing and the affidavits and briefs submitted by counsel, this Court finds that a rate of \$200 per hour is appropriate for Mr. Seymour. First, Mr. Seymour typically charges clients in the range of \$200-250 for work as his regular charge, a sum he has received for matters ranging from criminal defense to commercial litigation. Evidence presented by other lawyers demonstrated that this rate was reasonable for lawyers of his skill and experience. Second, Mr. Louis Bullock testified that he charges \$200 per hour for his work in the area of civil rights litigation and testified that such a rate would be reasonable for Mr. Seymour. Third, the rates cited by the Defendants were typical fees for insurance defense work, not necessarily appropriate as a comparison point for civil rights litigation. Thus, given the skill required and the complexity of the issues involved, this Court finds that the rate of \$200 per hour is a reasonable rate of compensation for Mr. Seymour. In addition to the factors discussed above, the Court also notes that

2641. Although this Court finds more compelling the arguments made by the dissenting opinions in Dague, the Court follows, as it must, the dictates of the Supreme Court's majority.

this case precluded Mr. Seymour from taking other work that would have paid his regular fee, the general undesirability in the community of a \$1983 prison violence case, and the novelty of the facts and issues raised by the case. See Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974).

Plaintiff argues that Mr. Lynn should be compensated at a rate of \$110 per hour. Plaintiff failed to present a sufficient quantum of evidence to demonstrate the reasonableness of this sum. According to Martindale Hubbel Law Directory, Mr. Lynn was admitted to the Oklahoma Bar in 1992 and was therefore in practice for only two years during much of the litigation in this case. While Plaintiff presented limited testimony substantiating a billable rate of \$110 for Mr. Lynn, Defendants argued that associates with 2-3 years of experience typically charge approximately \$70-80 per hour. One witness stated that \$100 per hour was a reasonable rate for an associate with the experience of Mr. Lynn. In view of the market rates for attorneys with this level of experience, this Court finds that Mr. Lynn should be compensated at a rate of \$100 per hour for his work on this case.

Plaintiff claims that Mr. J. Todd Willhoite should receive a rate of \$85 per hour. Mr. Willhoite was also admitted to the Oklahoma Bar in 1992 and served as the referring attorney in this matter. Plaintiff presented no evidence demonstrating the level of reasonable attorneys' fees in Claremore, the place of Mr. Willhoite's practice. In light of the testimony regarding compensation of law associates generally, this Court believes that

a range of \$70-100 would be appropriate. Given the relatively minor role played by Mr. Willhoite in the litigation and the largely administrative nature of any involvement he did have, this Court believes a rate of \$75 per hour is appropriate for the work done by him in this case.

There is substantial disagreement between the parties with regard to the number of reasonable billable hours that Plaintiff's counsel should charge in this case. Defendants have called excessive the hours spent drafting the Complaint, responding to the motion for summary judgment, preparing proposed jury instructions, and drafting post-verdict motions. From a legal perspective, however, this case involved numerous complex and novel issues of law. For instance, the exact standard to use with regard to a pretrial detainee subjected to potentially unconstitutional treatment was fundamental to this case but unsettled as a matter of law. Similarly, the Eighth Amendment standard of deliberate indifference is well-settled but hardly well-defined and frequently applied differently in many cases. Therefore, it is not per se unreasonable that counsel spent substantial time researching the law and drafting the pleadings.² However, some of this research

² At the time of the trial, there were very few, if any, reported cases that dealt with facts similar to the case at Bar. However, the Eleventh Circuit very recently reversed a district court order granting summary judgment on facts close to those here. In Hale v. Tallapoosa County, 50 F.3d 1579 (11th Cir. 1995), the Eleventh Circuit reversed the district court's grant of summary judgment on the issue of official liability after a pretrial detainee was beaten by other prisoners. The Eleventh Circuit found sufficient facts to support a determination that an excessive risk of violence flowed from an atmosphere of deliberate indifference reflected in various prison policies and customs.

was duplicative, since many of the issues were common to various stages of the litigation. Therefore, the Court finds that twenty research-related hours should be reduced from Mr. Lynn's time and ten research-related hours should be reduced from Mr. Seymour's billable hours.

Defendants also contest the amount of time billed for conferences with other attorneys. These hours appear predominantly to be billed by Mr. Lynn. Indeed, this Court concurs that an excessive amount of hours have been apportioned to such conferences without sufficient documentation of the purposes for those meetings. The burden is on the party seeking the fee to establish reasonableness. Spell v. McDaniel, 852 F.2d 762, 768 (4th Cir. 1988). Where the Court must approximate due to counsel's inadequate record-keeping, the court may consider it just to do so in favor of the party contesting the fee award. Id. Therefore, the Court will disregard fifteen hours billed by Mr. Lynn for conferences in this litigation.

The parties in this case zealously pursued their positions in this case. However, Defendants are correct that Plaintiff spent an excessive amount of time opposing the medical examination of Plaintiff, opposing Defendants' right to take the deposition of Plaintiff's mother, and research into admissibility of liability insurance. With regard to work done on these issues, the Court will subtract eight hours from the time charged by Mr. Lynn and four hours from Mr. Seymour.

Plaintiff claims that Mr. Willhoite should receive

compensation for 59.4 hours of work done in this case. However, Plaintiff has failed to demonstrate that Mr. Willhoite contributed to this extent in this litigation. For instance, Mr. Willhoite never appeared at the trial of this case or during any of the essential pretrial proceedings. Furthermore, some of the charges listed for Mr. Willhoite are unreasonable, including notations for time spent attempting but failing to reach a person by telephone. Many charges also are too ambiguous, claiming time spent for "research" or "letter to client" without any other specification of the work done. In light of the burden facing the Plaintiff to substantiate fees charged, this Court reduces the number of hours claimed for Mr. Willhoite by ten percent.

Therefore, the lodestar calculation for each of the three attorneys in this case provides for the following fee payments. Mr. Seymour is entitled to \$86,780; Mr. Lynn to \$57,550; and Mr. Willhoite to \$4009.50.

B. Enhancement

Plaintiff requests an enhancement of \$80,717.04 to the lodestar fee. Such an enhancement may be awarded where there is exceptional success in the litigation. Hensley v. Eckerhart, 461 U.S. 424, 435. Plaintiff seeks the enhancement based on the fact that two of "Oklahoma's leading civil rights lawyers" would have declined the case, vindication of important constitutional rights, attempts by Defendants to prejudice the jury, and results achieved. The Defendants argue that Plaintiff's conclusory

statements have not satisfied Plaintiff's burden of demonstrating the propriety of an enhancement.

Several of the reasons cited by the Plaintiff for the enhancement, such as the difficulty of the case or time required, are essentially subsumed by the factors relevant to the lodestar amount. Where the factors cited for the enhancement were already used to calculate the lodestar, the Supreme Court has required that the enhancement be denied. Blum v. Stenson, 104 S.Ct. 1541, 1549-1550 (1984).

Ultimately, it is a matter within the Court's discretion to allow a prevailing party an upward adjustment in cases of exceptional success. Id. An enhancement generally takes place when a lawyer achieves a tremendous victory with an extraordinary economy of time or under unusually difficult circumstances. Id. Under the above-mentioned guidelines, the case does not warrant an enhancement. In the course of this litigation, the attorneys for Plaintiff fully satisfied their obligations to their client and the Court. However, neither the circumstances of the litigation nor the results obtained were so exceptional as to merit an enhancement above the lodestar rate already provided by the Court.

Plaintiff also seeks an eight percent enhancement, styled either as interest on fees or for delay in payment. The Tenth Circuit has held that, as a general matter, no prejudgment interest should be paid for the period before the fees are awarded. Ramos, 713 F.2d at 555. In reply, the Plaintiff says that the eight percent increase is sought not as "prejudgment interest" but to

penalize Defendants for the delay in payment. Given the speed in which this case came on for trial and the other timely decisions reached by the Court, such a delay-based enhancement is unwarranted.

C. Reduction

The Defendants point out that the Court may *reduce* the award for claims that Plaintiff lost, such as claims concerning denial of medical care, official capacity liability, and punitive damages. See Ramos, 713 F.2d at 556. However, the cases reflect that where the claims are related, the Court need not reduce an award to account for unsuccessful claims. Where a party achieves excellent result in that important principles were vindicated, no reduction should be made because the plaintiff did not succeed on every issue. Id. The main case on this subject, Hensley v. Eckerhart, 103 S.Ct 1933 (1983), states:

Many civil rights cases will present only a single claim. In other cases the plaintiff's claims for relief will involve a common core of facts or will be based on related legal theories. Much of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis. Such a lawsuit cannot be viewed as a series of discrete claims. Instead the district court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation.

. . . .

Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified. In these circumstances the fee award should not be

reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit. Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing s fee.

Id. at 1940 (citations omitted).

In this case, the claims were very much related, and it makes little sense to discount the fees for unsuccessful claims, since there was a good faith basis for Plaintiff to urge them. Although Plaintiff lost on the denial of medical care argument, evidence related to that claim was used to demonstrate Plaintiff's pain and suffering. Similarly, the same core of facts was used to attribute liability to Defendants for Mr. Ebel's injuries in both their individual and official capacities. Also, evidence relating to the potential for punitive damages was relevant to meeting the standard of "deliberate indifference" required under the Eighth and Fourteenth Amendments of the Constitution. See Estelle v. Gamble, 429 U.S. 97 (1976). Given this common nucleus of facts and the results obtained, this Court will not reduce the fee award in this case for claims made that did not meet with success.

II. Costs

Items taxable as costs are set out in 28 U.S.C § 1920. These items are: 1) fees of clerk and marshal; 2) fees of court reporter necessarily obtained for use in the case; 3) fees and disbursements for printing and witnesses; 4) fees for exemplification and copies of papers necessarily obtained for use in the case; 5) docket fees; and 6) compensation for court appointed experts. The Supreme Court

has stated that expert fees are not shifted pursuant to § 1920 in civil rights cases. West Virginia University Hospitals v. Casey, 111 S.Ct. 1138 (1991).

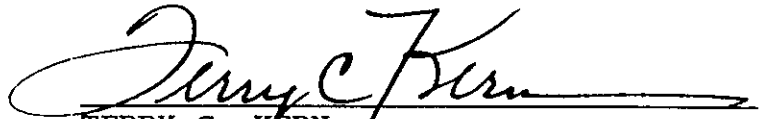
Furthermore, items that are normally itemized and billed by lawyers in addition to the hourly rate should be included in fee allowances in civil rights cases if reasonable in amount. Bee v. Greaves, 910 F.2d 686, 690 (10th Cir. 1990). For example, if one would normally charge a client for a flight to Denver to argue an appeal, this flight charge could be added to the hourly fee. However, if the item is normally included as part of the hourly rate and is considered part of the lawyer's overhead expense, it should not be awarded as a cost.

Plaintiff seeks \$6,987.96 in his applications for costs. Defendants challenge expenses such as \$11.34 in lunch costs during trial, \$491.80 for trial exhibits, \$169.10 for Pace invoice #9425, and \$291.60 for "pix for trial," Westlaw charges, and transcript fees. Except for the lunch charge of \$11.34, this Court finds the costs assessed to be reasonable and customarily billed in addition to the hourly rate. Therefore, this Court awards the Plaintiff \$6976.62 in costs.

III. Conclusion

In light of the considerations discussed above, the Court awards Plaintiff attorneys' fees in the amount of \$148,339.50 and \$6976.62 in costs.

ORDERED this 28 day of July, 1995.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 27 1995

MARY FIELDS,

Plaintiff,

vs.

SAND SPRINGS PUBLIC SCHOOLS,
INDEPENDENT SCHOOL DISTRICT,
NO. 2, TULSA COUNTY

Defendant.

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 94-C-672E

ENTERED ON DOCKET

DATE JUL 28 1995

STIPULATION TO DISMISS WITH PREJUDICE

Plaintiff Mary Fields and Defendant Sand Springs Public Schools, Independent School District No. 2, Tulsa County, by and through their attorneys, hereby stipulate pursuant to a Settlement Agreement between the parties that all claims in the above captioned cause have been dismissed with prejudice, with each party to bear their own costs and attorney fees.

MARY FIELDS, Plaintiff

By 

Jeff Nix, OBA #6688
2121 South Columbia
Tulsa, OK 74114
(918) 742-4486

ATTORNEY FOR PLAINTIFF

and

RIGGS, ABNEY, NEAL, TURPEN,
ORBISON & LEWIS

By 

Melvin C. Hall, OBA #3728

James R. Polan, OBA #12441

502 West Sixth Street

Tulsa, Oklahoma 74119-1010

(918) 587-3161

ATTORNEYS FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 26 1995

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

JOHNATHAN W. NEAL,

Plaintiff,

vs.

HANS P. NORBERG,

Defendant.

No. 95-C-553-B

ENTERED ON DOCKET

DATE JUL 28 1995

ORDER

Plaintiff, an inmate at the Tulsa County Jail, has filed with the Court a civil rights complaint, pursuant to 42 U.S.C. § 1983, and a motion for leave to proceed in forma pauperis, pursuant to 28 U.S.C. § 1915. In reliance upon the representations set forth in the motion, the Court concludes that Plaintiff should be granted leave to proceed in forma pauperis. The Court concludes, however, that Plaintiff's claims should be dismissed as frivolous under 28 U.S.C. § 1915(d).

In this civil rights action, Plaintiff sues Dr. Hans P. Norberg, the surgeon he was referred to the day after he was knocked unconscious at the Tulsa county Jail. Plaintiff alleges that Dr. Norberg failed to advise him that the exploratory surgery above his left eye would leave a scar and that he could seek a second opinion. Plaintiff seeks \$50,000 in damages and an order directing his release from the Tulsa County Jail.

The federal in forma pauperis statute is designed to ensure that indigent litigants have meaningful access to the federal courts without prepayment of fees or costs. Neitzke v. Williams, 490 U.S. 319, 324 (1989); 28 U.S.C. § 1915(d). To prevent abusive

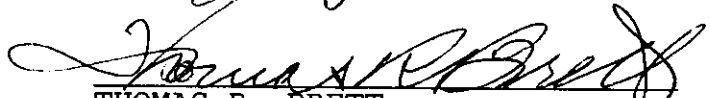
litigation, however, section 1915(d) allows a federal court to dismiss an in forma pauperis suit if the suit is frivolous. See 28 U.S.C. § 1915(d). A suit is frivolous if "it lacks an arguable basis in either law or fact." Neitzke, 490 U.S. at 325; Olson v. Hart, 965 F.2d 940, 942 n.3 (10th Cir. 1992). A suit is legally frivolous if it is based on "an indisputably meritless legal theory." Denton v. Hernandez, 112 S. Ct. 1728, 1733 (1992) (quoting Neitzke, 490 U.S. at 327). A complaint is factually frivolous, on the other hand, if "the factual contentions are clearly baseless." Id.

After liberally construing Plaintiff's pro se pleadings, see Haines v. Kerner, 404 U.S. 519, 520-21 (1972); Hall v. Bellmon, 935 F.2d 1106, 1100 (10th Cir. 1991), the Court concludes that Plaintiff's allegations lack any arguable basis in either law or fact. Plaintiff's claims that Dr. Norberg was negligent in performing the exploratory surgery and failing to advise him that he could obtain a second opinion do not amount to a constitutional violation. West v. Atkins, 487 U.S. 42, 48 (1988) (only the violation of a right secured by the Constitution or laws of the United States is actionable under 42 U.S.C. § 1983). Neither negligence nor gross negligence meets the deliberate indifference standard required for a violation of the cruel and unusual punishment clause of the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976); Ramos v. Lamm, 639 F.2d 559, 575 (10th Cir.

1980), cert. denied, 450 U.S. 1041 (1981).¹

Accordingly, Plaintiff's civil rights complaint is hereby **dismissed** as frivolous under 28 U.S.C. § 1915(d).

IT IS SO ORDERED this 26th day of July, 1995.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

¹ Under the Fourteenth Amendment Due Process Clause, pretrial detainees are entitled to the same degree of protection regarding medical care as that afforded convicted inmates under the Eighth Amendment. Martin v. Board of County Com'rs of County of Pueblo, 909 F.2d 402, 406 (10th Cir. 1990).

FILED

JUL 27 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CHARLES FREDERICK,

Plaintiff,

vs.

STATE OF OKLAHOMA,

Defendant.

No. 95-C-628-B

ENTERED
DATE JUL 28 1993

ORDER


Petitioner, a state inmate at James Crabtree Correctional Center, has filed with the Court a motion for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915, and a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner requests the reinstatement of his parental rights which were terminated as a result of his conviction in Case No. CRF-86-2147.

In reliance upon the representations set forth in the motion, the Court grants Petitioner leave to proceed in forma pauperis. The Court concludes, however, that the petition should be summarily dismissed under Rule 4 of the Rules Governing Section 2254 Cases because Petitioner is not challenging his conviction on grounds that "he is in custody in violation of the Constitution or laws or treaties of the United States."

Accordingly, Petitioner's motion for leave to proceed in forma pauperis (doc. #2) is **granted** and the petition is hereby **summarily dismissed** under Rule 4 of the Rules Governing Section 2254 Cases in the U.S. District Courts. The Clerk shall **mail** to Petitioner a

copy of his petition for a writ of habeas corpus.

IT IS SO ORDERED this 27 day of July, 1995.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

KENNETH HAROLD GOURLEY,

Petitioner,

vs.

BOBBY BOONE,

Respondent.

JUL 27 1995

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

No. 95-C-483-BU

ENTERED ON DOCKET

DATE JUL 28 1995

ORDER

This matter comes before the Court on Petitioner's motion to dismiss petition for a writ of habeas corpus without prejudice. Respondent has not objected.

Accordingly, Petitioner's motion to dismiss (docket #6) is hereby **granted** and the petition (docket #1) is hereby **dismissed without prejudice**. Respondent's motion to dismiss as abusive (docket #3) is **denied as moot**. The Clerk shall **mail** to Petitioner the extra copy of his motion to dismiss.

SO ORDERED THIS 26th day of July, 1995.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

(7)

CK
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ROBERT REICH, Secretary of
Labor, United States Department of Labor,

Plaintiff,

v.

MID-CONTINENT POWER CO., INC.,

Defendant.

FILED

JUL 27 1995
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 94-C-81BU

ENTERED ON DOCKET
DATE JUL 28 1995

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, Plaintiff Robert Reich, Secretary of Labor, United States Department of Labor ("Department of Labor") and Defendant Mid-Continent Power Company, Inc. ("MCPC"), all of the parties to this lawsuit, hereby stipulate to the dismissal of this lawsuit and all claims made therein, with prejudice.

THOMAS S. WILLIAMSON, JR.
Solicitor of Labor

JAMES E. WHITE
Regional Solicitor

Address:

U.S. Department of Labor
Office of the Solicitor
525 Griffin Street, Suite 501
Dallas, Texas 75202

JACK F. OSTRANDER
Counsel for Safety and Health

By:

Telephone: 214/767-4902

Margaret Terry Cranford
MARGARET TERRY CRANFORD
Attorney

Attorneys for Department of Labor

Ellen E. Gallagher

Neal Tomlins, OBA No. 10499

Ronald E. Goins, OBA No. 3430

Ellen E. Gallagher, OBA No. 14717

TOMLINS & GOINS

A Professional Corporation

21 Centre Park

2642 East 21st Street, Suite 230

Tulsa, Oklahoma 74114

(918) 747-6500

Attorneys for Defendant Mid-Continent Power
Company, Inc.

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA

JIM JOHNSON and PAM JOHNSON,)
)
Plaintiffs,)
)
vs.)
)
U.S.F. & G.)
)
Garnishee and Third)
Party Plaintiff,)
)
vs.)
)
TRI-STATE INSURANCE COMPANY,)
)
Third Party Defendant.)

ENTERED ON DOCKET
DATE JUL 28 1995
CASE NO. 95-C-275K

FILED

JUL 28 1995

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

NOW on this 12th day of July, 1995, this matter comes on for hearing before the undersigned Judge of the District Court. The parties appear by and through their respective attorneys of record. The Court being fully informed of the premises finds as follows:

1. That the attorney for the Plaintiffs, Jim Johnson and Pam Johnson, orally moved that they be dismissed from this action because Judgement obtained in the Creek County Case No. CJ-94-47 has been fully satisfied, and that the only remaining dispute was between U.S.F. & G. and Tri-State.

2. The attorney for U.S.F. & G. and the attorney for Tri-State joined in Plaintiffs' Motion.

Finding Plaintiffs' Motion to have merit IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs, Jim Johnson and Pam Johnson, be dismissed from this action, and that the case be recaptioned to read U.S.F. & G. vs. Tri-State.

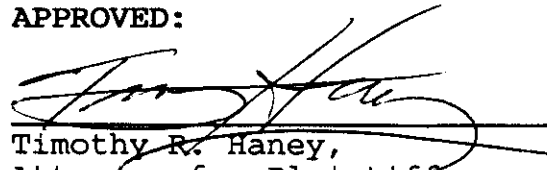
IT IS SO ORDERED.

Dated this 27 day of July, 1995.

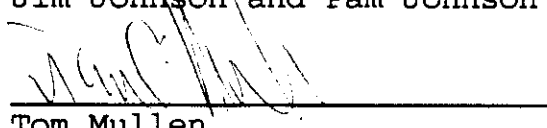
s/ TERRY C. KERN

JUDGE OF THE DISTRICT COURT

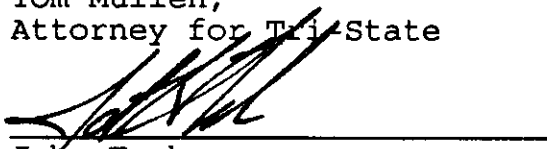
APPROVED:



Timothy R. Haney,
Attorney for Plaintiffs,
Jim Johnson and Pam Johnson



Tom Mullen,
Attorney for Tri-State



John Tucker,
Attorney for U.S.F. & G

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 27 1995

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 95-C-224-B

ONE PARCEL OF REAL PROPERTY
LOCATED AT ROUTE 1, BOX 166,
CLEVELAND, PAWNEE COUNTY,
OKLAHOMA, CONTAINING 1.60
ACRES, MORE OR LESS, AND ALL
BUILDINGS, APPURTENANCES,
IMPROVEMENTS, AND CERTAIN
CONTENTS THEREON,

and

SIX VEHICLES,

and

SIX BANK ACCOUNTS AND
ONE CERTIFICATE OF DEPOSIT,

Defendants.

ENTERED

DATE JUL 28 1995

JUDGMENT OF FORFEITURE

This cause having come before this Court upon the plaintiff's Motion for Judgment of Forfeiture by Default and by Stipulation, against the defendant real and personal properties and all entities and/or persons interested in the defendant real and personal properties, the Court finds as follows:

The verified Complaint for Forfeiture In Rem was filed in this action on the 9th day of March 1995, alleging that the defendant real and personal properties, to-wit:

NOTE: THIS ORDER IS TO BE MAILED
BY 1000 HOURS, JULY 28, 1995, AND
PROCEED THEREON IMMEDIATELY
UPON RECEIPT.

REAL PROPERTY:

ONE PARCEL OF REAL PROPERTY LOCATED AT ROUTE 1, BOX 166, CLEVELAND, PAWNEE COUNTY, OKLAHOMA, CONTAINING 1.60 ACRES, MORE OR LESS, AND ALL BUILDINGS, APPURTENANCES, IMPROVEMENTS, AND CONTENTS THEREON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

The South 337 feet of the North 575 feet of the West 207 feet of the NE/4 of Section 7, Township 20 North, Range 8 East, Pawnee County, Oklahoma, containing 1.60 acres, more or less, and all buildings, appurtenances, improvements, and contents thereof.

VEHICLES:

- 1) One 1987 Chevrolet Astro Van,
VIN 1GNDM15Z6HB1116233.
- 2) One 1991 Pontiac SLE,
VIN 1G2JB14K1M7555248.
- 3) One 1992 Pontiac Bonneville,
VIN 1G2HX53L5N1280554.
- 4) One 1992 Chevrolet Pickup,
VIN 2GCEC19K4N1139311.
- 5) One 1990 Ford Mustang,
VIN 1FACP42E2LF223110.
- 6) One 1983 Bayliner Capri
Ski Boat,
VIN BL1B41CS03833AQ12.

**BANK ACCOUNTS AND
CERTIFICATE OF DEPOSIT:**

1. **FIRST BANK OF CLEVELAND,
CLEVELAND, OKLAHOMA**

The entire proceeds, including accrued interest, of Joint Checking Account No. 0-644-945, in the name of Jimmy and Cathy Downey.

2. **FIRST BANK OF CLEVELAND,
CLEVELAND, OKLAHOMA**

The entire proceeds, including accrued interest, of Super NOW account in the name of Jimmy and Cathy Downey.

3. **FIRST BANK OF CLEVELAND,
CLEVELAND, OKLAHOMA**

Certificate of Deposit in the name of Jimmy and Cathy Downey, with a principal amount of \$10,000.00, plus any accrued interest.

4. **FIRST BANK OF CLEVELAND,
CLEVELAND, OKLAHOMA**

The entire proceeds, including accrued interest, of Rainmaker Game Farms Account of Jimmy Downey, Account No. 0-874-174.

5. **FIRST BANK OF CLEVELAND,
CLEVELAND, OKLAHOMA**

The entire proceeds, including accrued interest, of Accounts No. 0-644-923 and 1-144-499 in the name of Richelle Downey.

6. **FIRST BANK OF CLEVELAND,
CLEVELAND, OKLAHOMA**

Entire proceeds, including accrued interest, on the account in the name of Jimmy Downey, Jr.

7. FIRST BANK OF CLEVELAND,
CLEVELAND, OKLAHOMA

Entire proceeds, including accrued interest, on the account in the name of Charles Downey,

are subject to forfeiture pursuant to 18 U.S.C. § 981, because there is probable cause to believe they are properties involved in transactions or attempted transactions in violation of 18 U.S.C. §§ 1956 or 1957, or properties traceable thereto.

Warrant of Arrest and Notice In Rem as to the defendant real property was issued by The Honorable Thomas R. Brett, Chief Judge of the United States District Court for the Northern District of Oklahoma, on March 15, 1995, and Warrant of Arrest and Notice In Rem as to the defendant personal properties was issued by the Clerk of this Court on the 17th day of March, 1995, providing that the United States Marshal for the Northern District of Oklahoma arrest and seize the defendant real and personal properties and that immediately upon the arrest and seizure of the defendant real and personal properties the United States Department of the Treasury, Internal Revenue Service, Criminal Investigation Division, or its agent, EG&G Dynatrend, take custody of the defendant real and personal properties, as substitute custodian, operator, and manager of the defendant real and personal properties, in lieu of the United States Marshals Service, pursuant to the Treasury Forfeiture

Fund Act of 1992, 31 U.S.C. 9703. The Warrants further provided that the United States Marshals Service publish Notice of Arrest and Seizure in the Northern District of Oklahoma, according to law.

That the United States Marshals Service personally served a copy of the Complaint for Forfeiture In Rem and the Warrant of Arrest and Notice In Rem on the defendant real property and personal properties, as follows:

Real Property Known As: Route 1, Box 166, Cleveland, Pawnee County, Oklahoma, containing 1.60 Acres, More or Less	Served: April 5, 1995
1987 Chevrolet Astro Van, VIN 1GNDM15Z6HB116233	Served: April 3, 1995
1991 Pontiac SLE, VIN 1G2JB14K1M7555248	Served: April 3, 1995
1992 Pontiac Bonneville, VIN 1G2HX53L5N1280554	Served: April 3, 1995
1992 Chevrolet Pickup, VIN 2GCEC19K4N1139311	Served: April 3, 1995
1990 Ford Mustang, VIN 1FACP42E2LF223110	Served: April 3, 1995
1983 Bayliner Capri Ski Boat VIN BL1B41CS03833AQ12	Served: April 3, 1995
<u>FIRST BANK OF CLEVELAND, CLEVELAND, OKLAHOMA</u>	
The entire proceeds, including accrued interest, of Joint Checking Account No. 0-644-945, in the name of Jimmy and Cathy Downey.	Served: April 5, 1995

**FIRST BANK OF CLEVELAND,
CLEVELAND, OKLAHOMA**

The entire proceeds, including accrued interest, of Super NOW account in the name of Jimmy and Cathy Downey.

Served:
April 5, 1995

**FIRST BANK OF CLEVELAND,
CLEVELAND, OKLAHOMA**

Certificate of Deposit in the name of Jimmy and Cathy Downey, with a principal amount of \$10,000.00, plus any accrued interest.

Served:
April 5, 1995

**FIRST BANK OF CLEVELAND,
CLEVELAND, OKLAHOMA**

The entire proceeds, including accrued interest, of Rainmaker Game Farms Account of Jimmy Downey, Account No. 0-874-174.

Served:
April 5, 1995

**FIRST BANK OF CLEVELAND,
CLEVELAND, OKLAHOMA**

The entire proceeds, including accrued interest, of Accounts No. 0-644-923 and 1-144-499 in the name of Richelle Downey.

Served:
April 5, 1995

**FIRST BANK OF CLEVELAND,
CLEVELAND, OKLAHOMA**

Entire proceeds, including accrued interest, on the account in the name of Jimmy Downey, Jr.

Served:
April 5, 1995

**FIRST BANK OF CLEVELAND,
CLEVELAND, OKLAHOMA**

Entire proceeds, including accrued interest, on the account in the name of Charles Downey.

Served:
April 5, 1995

The following individuals were determined to be the only potential claimants in this action with possible standing to file a claim, or claims, herein to all or part of the real and personal properties.

CATHY MARIE DOWNEY agreed to forfeiture of all of the above-described real and personal properties and bank accounts in her plea agreement executed November 20, 1994, in Case No. 94-CR-172-C in the United States District Court for the Northern District of Oklahoma. In addition, on December 7, 1994, Cathy Marie Downey also executed a Stipulation for Forfeiture of all of the above-described real and personal properties and bank accounts and executed a Quit-Claim Deed, conveying to the United States of America all of her right, title, and interest in and to the defendant real property.

JIMMY WALTON DOWNEY, JR., on December 7, 1994, executed a Stipulation for Forfeiture of all of the above-described real and personal properties and executed a Quit-Claim Deed, conveying to the United States of America all of his right, title, and interest in and to the defendant real property.

CHARLES HENRY CHAMBERS, a record owner of the defendant real property upon which the residence constructed by Jimmy Walton Downey and Cathy Marie Downey is situated, executed a Quit-Claim Deed on January 4, 1995, conveying to the United States of America all of his right, title, and interest in and to the defendant real property.

RUTH BERNICE CHAMBERS, a record owner of the defendant real property upon which the residence constructed by Jimmy Walton Downey and Cathy Marie Downey is situated, executed a Quit-Claim Deed on January 4, 1995, conveying to the United States of America all of her right, title, and interest in and to the defendant real property.

USMS 285s reflecting the service upon the defendant real and personal properties are on file herein, Stipulations for Forfeiture are also on file herein, copies of the Quit-Claim Deeds of all of the owners of the real property are attached to the

Motion for Judgment of Forfeiture filed herein, and the plea agreement is attached to the Complaint for Forfeiture on file herein.

Cathy Marie Downey, Jimmy Walton Downey, Jr., Charles Henry Chambers, and Ruth Bernice Chambers, who were determined to be the only potential claimants in this action with possible standing to file a claim, or claims, to the defendant real and/or personal properties and bank account or account proceeds, have executed documents consenting to the forfeiture and conveying to the United States of America their respective interests in the defendant real and/or personal properties and bank accounts or account proceeds, as set forth above.

All persons or entities interested in the defendant real and personal properties and bank accounts were required to file their claims herein within ten (10) days after service upon them of the Warrants of Arrest and Notices In Rem, publication of the Notices of Arrest and Seizure, or actual notice of this action, whichever occurred first, and were required to file their answer(s) to the Complaint within twenty (20) days after filing their respective claim(s).

The ad valorem taxes on the defendant real property for 1994 were paid in full on January 13, 1995. The ad valorem taxes for 1995 are not yet due. No taxes for prior years are delinquent.

described defendant real and personal properties and account proceeds from the bank accounts set forth above:

REAL PROPERTY:

ONE PARCEL OF REAL PROPERTY LOCATED AT ROUTE 1, BOX 166, CLEVELAND, PAWNEE COUNTY, OKLAHOMA, CONTAINING 1.60 ACRES, MORE OR LESS, AND ALL BUILDINGS, APPURTENANCES, IMPROVEMENTS, AND CONTENTS THEREON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

The South 337 feet of the North 575 feet of the West 207 feet of the NE/4 of Section 7, Township 20 North, Range 8 East, Pawnee County, Oklahoma, containing 1.60 acres, more or less, and all buildings, appurtenances, improvements, and contents thereof.

VEHICLES:

- 1) One 1987 Chevrolet Astro Van,
VIN 1GNDM15Z6HB1116233.
- 2) One 1991 Pontiac SLE,
VIN 1G2JB14K1M7555248.
- 3) One 1992 Pontiac Bonneville,
VIN 1G2HX53L5N1280554.
- 4) One 1992 Chevrolet Pickup,
VIN 2GCEC19K4N1139311.
- 5) One 1990 Ford Mustang,
VIN 1FACP42E2LF223110.
- 6) One 1983 Bayliner Capri
Ski Boat,
VIN BL1B41CS03833AQ12.

**BANK ACCOUNTS AND
CERTIFICATE OF DEPOSIT:**

- 7) \$22,249.26 Proceeds from Account No. 644-945 at First Bank of Cleveland, Cleveland, Oklahoma, paid by Cashier's Check No. 4047;
- 8) \$1,372.27 Proceeds from Account No. 1-144-510 at First Bank of Cleveland, Cleveland, Oklahoma, paid by Cashier's Check No. 4050;
- 9) \$3,946.85 Proceeds from Account No. 874-174 at First Bank of Cleveland, Cleveland, Oklahoma, paid by Cashier's Check No. 4044;
- 10) \$10,157.07 Proceeds from Certificate of Deposit No. 8710, paid by Cashier's Check No. 4049 of First Bank of Cleveland, Cleveland, Oklahoma;
- 11) \$3.35 Proceeds from Account No. 644-923 at First Bank of Cleveland, Cleveland, Oklahoma, and paid by Cashier's Check No. 4046;
- 12) \$5,410.26 Proceeds from Account No. 1-144-499 at First Bank of Cleveland, Cleveland, Oklahoma, and paid by Cashier's Check No. 4043;
- 13) \$5,830.10 Proceeds from Account No. 644-439 at First Bank of Cleveland, Cleveland, Oklahoma, and paid by Cashier's Check No. 4045;
- 14) \$1,417.37 Proceeds from Account No. 1-144-521 at First Bank of Cleveland, Cleveland, Oklahoma, and paid by Cashier's Check No. 4041,

and that such real and personal properties be, and they hereby are, forfeited to the United States of America for disposition according to law.

No other persons or entities upon whom service was effected more than thirty (30) days ago have filed a claim, answer, or other response or defense herein.

Publication of Notice of Arrest and Seizure occurred in the Tulsa Daily Commerce & Legal News, Tulsa, Oklahoma, the district in which this action is filed, on April 20 and 27 and May 4, 1995, and in the Pawnee Chief, Pawnee, Pawnee County, Oklahoma, the county in which the defendant real property is located, on April 19 and 26 and May 3, 1995.

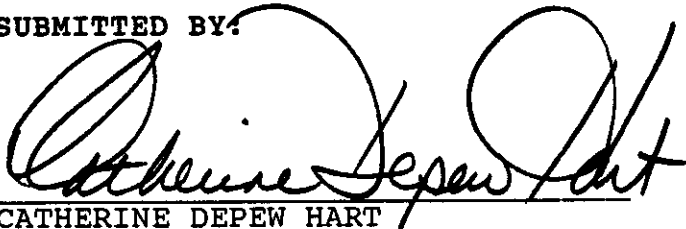
No other claims in respect to the defendant real and personal properties and bank accounts or account proceeds have been filed with the Clerk of the Court, and no other persons or entities have plead or otherwise defended in this suit as to said defendant real or personal properties and bank accounts or account proceeds, and the time for presenting claims and answers, or other pleadings, has expired; and, therefore, default exists as to the defendant real and personal properties and bank accounts or account proceeds, and all persons and/or entities interested therein, except Cathy Marie Downey, Jimmy Walton Downey, Jr., Charles Henry Chambers, and Ruth Bernice Chambers, who have consented to the forfeiture by plea agreement, stipulation for forfeiture, and quit-claim deeds.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED by the Court that judgment of forfeiture be entered against the following-described defendant real and personal properties and account proceeds from the bank accounts set forth above:

S/ THOMAS R. BRETT

THOMAS R. BRETT, Chief Judge of the
United States District Court

SUBMITTED BY:

A handwritten signature in cursive script, appearing to read "Catherine Depew Hart". The signature is written in dark ink and is positioned above the printed name.

CATHERINE DEPEW HART
Assistant United States Attorney

N: \UDD\CHOOK\FC\DOWNEY1\04682

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HOWARD HAMILTON, a single person;
JUSTINA WENZEL fka Justina Hamilton;
JODY WENZEL; THE COMMONS
HOMEOWNER'S ASSOCIATION; CITY
OF BROKEN ARROW, Oklahoma;
COUNTY TREASURER, Tulsa County,
Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

ENTERED ON DOCKET
DATE JUL 28 1995

FILED

JUL 28 1995

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Civil Case No. 95-C 192K

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 27 day of July,

1995. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; the Defendant, CITY OF BROKEN ARROW, Oklahoma, appears by Michael R. Vanderburg, City Attorney, Broken Arrow, Oklahoma; the Defendant, HOWARD HAMILTON, appears not having previously filed a Disclaimer; and the Defendants, JUSTINA WENZEL aka Tina Wenzel fka Justina Hamilton, JODY WENZEL, and THE COMMONS HOMEOWNER'S ASSOCIATION, appear not, but make default.

NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

The Court being fully advised and having examined the court file finds that the Defendant, HOWARD HAMILTON, signed a Waiver of Summons on March 9, 1995; that the Defendant, JUSTINA WENZEL aka Tina Wenzel fka Justina Hamilton, signed a Waiver of Summons on March 2, 1995; that the Defendant, JODY WENZEL, signed a Waiver of Summons on April 1, 1995; that the Defendant, THE COMMONS HOMEOWNER'S ASSOCIATION, signed a Waiver of Summons on March 23, 1995; that the Defendant, CITY OF BROKEN ARROW, Oklahoma, was served a copy of Summons and Complain on March 2, 1995, by Certified Mail.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on March 17, 1995; that the Defendant, CITY OF BROKEN ARROW, Oklahoma, filed its Answer on March 22, 1995; that the Defendant, HOWARD HAMILTON, filed his Disclaimer on March 21, 1995; and that the Defendants, JUSTINA WENZEL aka Tina Wenzel fka Justina Hamilton, JODY WENZEL, and THE COMMONS HOMEOWNER'S ASSOCIATION, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, JUSTINA WENZEL, is one and the same person as Tina Wenzel and formerly referred to as Justina Hamilton, and will hereinafter be referred to as "JUSTINA WENZEL." The Defendants, HOWARD HAMILTON and JUSTINA HAMILTON now JUSTINA WENZEL, were granted a divorce in Tulsa County District Court, on July 5, 1990. The Defendant, HOWARD HAMILTON, is a single person. The Defendants, JODY WENZEL and JUSTINA WENZEL, are husband and wife.

The Court further finds that on July 17, 1992, JUSTINA HAMILTON-WENZEL, filed her voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 92-02507-C. On November 5, 1992, the United States Bankruptcy Court for the Northern District of Oklahoma filed its Discharge of Debtor and the case was subsequently closed on March 4, 1993.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

LOT EIGHTEEN (18), BLOCK TWO (2), "THE COMMONS", PLANNED UNIT DEVELOPMENT NUMBER 26, AN ADDITION TO THE CITY OF BROKEN ARROW, TULSA COUNTY, STATE OF OKLAHOMA, A RESUBDIVISION OF LOTS 1 THRU 13, BLOCK 2, AND ALL OF BLOCK 7, "CANTERBURY AMENDED" AN ADDITION TO THE CITY OF BROKEN ARROW, TULSA COUNTY, OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF.

The Court further finds that on May 25, 1983, Dana L. Redin, executed and delivered to OAKWOOD MORTGAGE CORPORATION, her mortgage note in the amount of \$46,450.00, payable in monthly installments, with interest thereon at the rate of Twelve percent (12%) per annum.

The Court further finds that as security for the payment of the above-described note, Dana L. Redin, a Single Person, executed and delivered to OAKWOOD MORTGAGE CORPORATION, a mortgage dated May 25, 1983, covering the above-described property. Said mortgage was recorded on June 1, 1983, in Book 4695, Page 385, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 20, 1983, Oakwood Mortgage Corporation, assigned the above-described mortgage note and mortgage to Mortgage Clearing Corporation. This Assignment of Mortgage was recorded on June 22, 1983, in Book 4700, Page 1302, in the records of Tulsa County, Oklahoma.

The Court further finds that on February 14, 1989, Mortgage Clearing Corporation, assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on February 16, 1989, in Book 5167, Page 514, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, HOWARD HAMILTON and JUSTINA WENZEL, formerly husband and wife, currently hold title to the property by virtue of a General Warranty Deed, dated June 27, 1987, recorded on July 2, 1987, in Book 5036, Page 1171, in the records of Tulsa County, Oklahoma, and are the current assumptors of the subject indebtedness.

The Court further finds that on February 1, 1989, the Defendant, HOWARD HAMILTON, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. A superseding agreement was reached between these same parties on April 1, 1990.

The Court further finds that the Defendants, HOWARD HAMILTON and JUSTINA WENZEL, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, HOWARD HAMILTON and JUSTINA WENZEL, are indebted to

the Plaintiff in the principal sum of \$73,298.66, plus interest at the rate of 12 percent per annum from January 25, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$30.00 which became a lien on the property as of June 25, 1993. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, CITY OF BROKEN ARROW, Oklahoma, claims no right title or interest in the subject real property, except insofar as is the lawful holder of certain easements as shown on the duly recorded plat thereof.

The Court further finds that the Defendants, JUSTINA WENZEL, JODY WENZEL, and THE COMMONS HOMEOWNER'S ASSOCIATION, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that the Defendant, HOWARD HAMILTON, disclaims any right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and

Urban Development, have and recover judgment In Rem against the Defendants, HOWARD HAMILTON and JODY WENZEL, in the principal sum of \$73,298.66, plus interest at the rate of 12 percent per annum from January 25, 1995 until judgment, plus interest thereafter at the current legal rate of 5.7 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$30.00, plus costs and interest, for personal property taxes for the year 1992, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, HOWARD HAMILTON, JUSTINA WENZEL, JODY WENZEL, and THE COMMONS HOMEOWNER'S ASSOCIATION, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, CITY OF BROKEN ARROW, Oklahoma, has no right, title or interest in the subject real property, except insofar as it is the lawful holder of certain easements as shown on the duly recorded plat thereof.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, HOWARD HAMILTON and JUSTINA WENZEL, to satisfy the judgment in rem of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell

according to Plaintiff's election with or without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$30.00, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

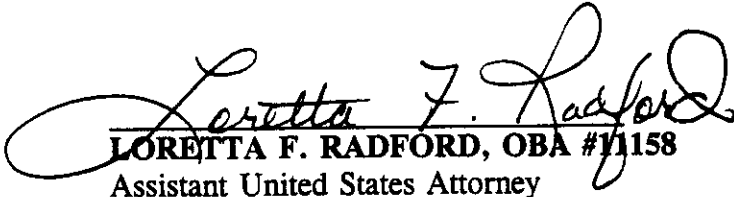
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

/s/ TERRY C. KERN

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



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County Treasurer and
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P. O. Box 610
Broken Arrow, OK 74012
(918) 251-5311
Attorney for Defendant,
City of Broken Arrow, Oklahoma

Judgment of Foreclosure
Civil Action No. 95-C 192K

LFR:flv

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
JUL 28 1995
DATE

DARIN P. FARBER

Plaintiff,

vs.

No. 94-C-1155-K

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

FILED

JUL 2 1995

ORDER

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Now before the Court is the motion for partial summary judgment by Defendant State Farm Mutual Automobile Insurance Co. ("State Farm") against Plaintiff Darin Farber ("Farber") with regard to seven out of ten policies upon which Farber bases his claims.

I. Facts

On July 7, 1993 Farber was involved in an automobile accident that occurred in Pawhuska, Oklahoma when another driver ran a red light and hit Farber's 1990 Ford truck. Farber suffered injuries to his lower back. The driver who ran the red light had insurance, but that insurance was inadequate to compensate Farber for his claimed injuries.

At the time of the accident, Farber was living with his natural mother, Janice West, and his step father, Lee Roy West, at their ranch. Plaintiff, Janice West, and Lee West (the "Family") collectively owned and operated ten motor vehicles that were all insured by Defendant at the time of the subject accident.

Three of these policies insured: 1) a 1990 Ford F-250 Truck; 2) a 1982 Ford F-250 Flatbed Truck; and 3) a 1990 Chevrolet Camaro. State Farm does not seek summary judgment as to the three policies insuring these vehicles. The remaining seven policies ("the Unrelated Policies") insured vehicles that were not involved in the July 7, 1993 accident. Farber did not own any of those seven vehicles. The Unrelated Policies provided underinsured motorist coverage to Lee Roy and Janet West and to "any relative [of the named insured] who does not own a car." Defendant seeks summary judgment with respect to these seven policies.

In response, Farber argues that he should be able to "stack" the underinsured motorist coverage provided by the Unrelated Policies. Farber states that it was the intent of the members of his family to buy appropriate coverage in order to stack the UM coverage. On this basis, he objects to the motion for summary judgment.

The insurance for all ten policies was acquired through the Defendant's agent, Don Wells, in Pawhuska, Oklahoma.

II. Summary Judgment Standard

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact" and "the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202 (1986); Widon Third

Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342, 345 (10th Cir. 1986), cert den. 480 U.S. 947 (1987). In Celotex, 477 U.S. at 322 (1986), it is stated:

"[T]he plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

A party opposing a properly supported motion for summary judgment may not rest upon mere allegations or denials of his pleadings, but must affirmatively prove specific facts showing there is a genuine issue of material fact for trial. In Anderson v. Liberty Lobby, Inc., the Court stated:

The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff.

477 U.S. at 252. The Tenth Circuit requires "more than pure speculation to defeat a motion for summary judgment" under the standards set by Celotex and Anderson. Setliff v. Memorial Hospital of Sheridan County, 850 F.2d 1384, 1393 (10th Cir. 1988).

III. Discussion

The undisputed facts show that Plaintiff was a relative of Lee Roy and Janet West. It is also undisputed that Farber owned three automobiles. Indeed, he was driving one of the cars he owned, the 1990 Ford Truck, when he had the accident on July 7, 1993.

Given these facts and the language of the policies, a

reasonable jury could only conclude that Farber is not entitled to the proceeds of the seven Unrelated Policies. Farber clearly possesses a car and possessed one at the time of the accident. However, the Unrelated Policies only provide UM coverage to relatives of Janice and Lee Roy West who do not own a car. (Def.'s Mot. for Summ. J., Exh. H, p.11.)

Although Plaintiff's legal theory is unclear, it appears that Farber seeks to argue that he and other family members relied on representations, statements, and actions of the insurance agent such that the family was prevented from properly stacking their UM coverage.¹ However, estoppel cannot be used to create coverage for risks specifically excluded under an insurance policy. Western Insurance Co. v. Cimarron Pipe Line Constr. Co., 748 F.2d 1397, 1399 (applying Oklahoma law). In Western Insurance, the Tenth Circuit stated:

The general rule is that while courts may perhaps be liberal in their application of the doctrines of waiver and estoppel to defeat a forfeiture of a contract of insurance, it is equally well settled that coverage of an insurance policy may not be extended by waiver or estoppel so as to include a particular risk which, under the terms of the written policy, is specifically excluded.

Id. Similarly, the Oklahoma Supreme Court cited with approval a Pennsylvania case that held that the doctrine of estoppel is not available to bring within the coverage of an insurance policy risks that are not covered within its terms or that are expressly

¹ In the insurance context, stacking refers to the ability of the insured, when covered by more than one insurance policy, to obtain benefits from a second policy on the same claim when recovery from the first policy alone would be inadequate.

excluded therefrom. Lester v. Sparks, 583 P.2d 1097, 1100 (Okla. 1978).


Finally, the Oklahoma Supreme Court has approved of contract language nearly identical to the language used here. The Oklahoma Court determined that clauses denying coverage to relatives who own a car are not unconscionable. Shepard v. Farmers Ins. Co., 678 P.2d 250, 252 (Okla. 1983).

Summary judgment is appropriate in an insurance coverage case where the record demonstrates that a plaintiff's claim of insurance coverage cannot be sustained in light of the language of the policy and the applicable law. See Allstate Ins. Co. v. Brown, 920 F.2d 664 (10th Cir. 1990); Pfeifer v. Sentry Insurance, 745 F. Supp. 1434, 1440 (E.D. Wis 1990). Clearly, Farber falls into a category of persons specifically excluded by the contract language. Thus, Farber's claim for coverage under the seven Unrelated Policies is not supported by sufficient evidence to survive State Farm's summary judgment motion.

IV. Conclusion

For the reasons discussed above, Defendant's motion for partial summary judgment is granted.

ORDERED this 27 day of July, 1995.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

IN RE:)
)
MAPS INTERNATIONAL, INC.,)
)
Debtor.)
)
SNEED, LANG, ADAMS & BARNETT,)
)
Plaintiffs/Appellants,)
)
v.)
)
GLEN TAYLOR, Trustee for the)
Bankruptcy Estate of MAPS)
INTERNATIONAL, INC.,)
)
Defendant/Appellee.)

Bky. No. 91-01296-C
Chapter 11

ENTERED ON DOCKET

DATE ~~JUL 28 1995~~

FILED

JUL 27 1995

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Case No. 95-C-56-K

ORDER

This order pertains to the appeal of Sneed, Lang, Adams & Barnett ("Sneed Lang") from the final order of the United States Bankruptcy Court for the Northern District of Oklahoma entered on January 6, 1995, finding that the claim of Sneed Lang is not a debt of MAPS International, Inc. ("International") and should therefore be disallowed.

Sneed Lang has represented Mr. Lynn Whitefield ("Whitefield") and corporations owned by him on various projects since 1984. Other lawyers in Tulsa and Oklahoma City have also represented Mr. Whitefield and his corporations during that time. In 1990, James Lang of Sneed Lang was asked by Whitefield to attempt to recover monies from a transaction in Mexico. Whitefield had tried unsuccessfully to purchase a Mexican company called Unimega, and he asked Sneed Lang to sue for either the recovery of the down payment of \$390,000.00 or for specific performance (TR 25-26). The purchase contract had been in Whitefield's name and the name of his wife and her relatives because Mexican

law required that a certain percentage or number of persons acquiring a Mexican company be Mexican nationals. Whitefield allegedly told Mr. Lang that the acquired company was to become a part of International, another corporation he owned, that International would be ultimately responsible for paying the fees related to the Unimega case, and that money from International had gone into the purchase of the Mexican company (TR 27, 34). The employment contract between Sneed Lang and Whitefield was an oral agreement, and there was no writing involved.

Sneed Lang brought suit for the recovery of the money in the names of the parties to the contract, since they were the real parties in interest. Sneed Lang's statements during this time were addressed to Mid America Process Services (MAPS), referencing sub-account 5241-2, the "Unimega" sub-account. Mr. Lang testified that a substantial amount of work was done in the first few days, and that the MAPS Unimega sub-account was initially used only to capture the initial time spent, and would have been transferred to the existing International billing account if the case had not been settled so quickly.¹ Nevertheless,

¹Mr. Lang testified:

... I would pull out certain numbers that appeared to be under the MAPS, the 5241 number, the general MAPS' number that would relate to some other entity. ... And I would do this periodically in my representation of him. And had by this time [referring to a letter dated July 10, 1990] the Unimega Case not have been settled, I would have probably done that also and put it under International at that point in time. But by this point in time, we had probably reached a settlement agreement a month or a month and a half before. So it would have been a useless act (TR 30).

In his testimony, Mr. Lang also confirmed that the firm had an International account (TR 30). When asked why bills were not sent directly to International rather than to the MAPS' general account, Mr. Lang answered:

Well, as I said, originally there was a good deal of work in the front end of the case and we simply put it under the general MAPS account. It became apparent it was an International claim very shortly thereafter. But rather than change all of the files over and all of the documents over, it also became apparent it was going to settle in the very near future so rather than go to the trouble to change them all over, we simply carried it through as a MAPS general -- or under the MAPS general number, but settled it well before this letter of July 10, 1990. So it would not make any sense thereafter to change the billing number.

Sneed Lang never sent any bills to International. Moreover, no bills included any reference to International.

Gene L. Mortensen of Rosenstein, Fist & Ringold eventually entered an appearance for the defendant, and a settlement was reached on July 20, 1990, in which Whitefield recovered \$360,185.00. He used \$150,000.00 of this amount to repay a debt he owed to International (TR 57). The remaining amount went to entities other than International.

On April 17, 1991, International sought protection under Chapter 11 of the Bankruptcy Act. Sneed Lang was listed as a creditor of International for the amount of \$29,323.17, the amount of fees outstanding for the recovery of the \$360,185.00, but no claim was filed.² Sneed Lang filed a claim for the fee in Whitefield's personal bankruptcy after allegations of alter ego were made by the trustee concerning Whitefield and the corporations he controlled. The trustee objected to the payment of Sneed Lang as a creditor out of the estate of International on the ground that the services were rendered on behalf of Whitefield personally.

The bankruptcy court noted that International had nothing to do with the purchase of Unimega, and that the funds that went toward the purchase came substantially from funds which did not belong to International. He also noted that the lawsuit to recover the funds was filed in the name of Whitefield, his wife and his wife's relatives, not International, and that those parties, not International, executed the settlement agreement. In addition, the settlement check was made payable to Whitefield personally, who

²The bankruptcy court correctly noted, on page 2 of his Supplemental Findings of Fact and Conclusions of Law, that "this claim was not described as disputed, contingent, or unliquidated, and therefore Sneed Lang was not required to file a claim to have it allowed."

deposited it in his personal account, and used the proceeds for his personal purposes. The \$150,000 received by International was for payment of a legitimate debt that Whitefield owed to it. The bankruptcy court reasonably concluded that Sneed Lang itself never believed that International was its client, relying upon the documentary evidence, and stating that "right from the beginning in February and through many billings up to September 1990, the records of Sneed Lang show that the client was MAPS in care of Lynn Whitefield, not International." [Supplemental Findings, p. 6-7].³ The fact that the claim was listed against International has only marginal probative value in light of the circumstantial evidence presented by documentation generated contemporaneously by Sneed Lang.

This court has jurisdiction to hear appeals from final decisions of the bankruptcy court under 28 U.S.C. § 158(a). Bankruptcy Rule 8013 sets forth a "clearly erroneous" standard for appellate view of bankruptcy rulings with respect to findings of fact. In re Morrissey, 717 F.2d 100, 104 (3rd Cir. 1983). This "clearly erroneous" standard does not apply to review of findings of law or mixed questions of law and fact, which are subject to the de novo standard of review. In re Ruti-Sweetwater, Inc., 836 F.2d 1263, 1266 (10th Cir. 1988). The parties agree that this appeal challenges the findings of fact by the bankruptcy court, so the clearly erroneous standard of review applies. Based on a careful review of the record in this case, including all exhibits and transcripts, the bankruptcy court's determination was reasonable and supported by the evidence. The factual findings

³The bankruptcy court also wondered why, if International owed the money, did Sneed Lang file a claim in the Whitefield's personal bankruptcy case? Of course, Mr. Lang argues that this was done to protect the firm from losing its claim, if an alter ego theory proved to be successful.

were sound, and no legal errors were made.

Sneed Lang argues that the bankruptcy court erred in its supplemental findings of fact and conclusions of law filed on January 25, 1995, when the court concluded:

Sneed Lang represented all of the above-named debtors in each of their respective bankruptcies. Sneed, Lang prepared each of the petitions, Statements of Affairs, and Schedules of Assets and Liabilities for International, Whitefield and each of the Mid-America Companies.

[Supplemental Findings, p. 2, ¶ 4]. There is no doubt that this finding was mistaken. Counsel agree that Sneed Lang did not prepare the petitions and schedules or otherwise represent the debtor corporations owned by Whitefield in any of the Chapter 11 proceedings. The Whitefield entities, including International, were represented by the firm of English, Jones & Faulkner, and all schedules were prepared by that firm (Appendix H, Docket #3). Significantly, the bankruptcy court did not rely on its mistaken finding that Sneed Lang prepared the bankruptcy filings in ruling on the ultimate issue of whether or not to allow Sneed Lang's claim in the International bankruptcy case.

As the decision of the bankruptcy court is supported by substantial circumstantial and documentary evidence, it cannot be said to be clearly erroneous. The decision is therefore AFFIRMED.

Dated this 27 day of July, 1995.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

S:maps.or

FILED
United States Court of Appeals
Tenth Circuit

MAY 31 1995

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

FILED

PATRICK FISHER
Clerk

CHERYL E. LIMERICK,

JUL 27 1995

Plaintiff-Appellant, **Richard M. Lawrence, Clerk**
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

v.

SHIRLEY S. CHATER, Commissioner of
Social Security,*

Defendant-Appellee.

No. 94-5149
(D.C. No. 92-C-857-E)
(N.D. Okla.)

A true copy

Teste

EOO 7/28/97

Patrick Fisher
Clerk, U. S. Court of
Appeals, Tenth Circuit

ORDER AND JUDGMENT**

By

[Signature]
Deputy Clerk

Before EBEL and BARRETT, Circuit Judges, and KANE,** District Judge.

***Honorable John L. Kane, Jr., Senior District Judge, United States District Court for the District of Colorado, sitting by designation.

* Effective March 31, 1995, the functions of the Secretary of Health and Human Services in social security cases were transferred to the Commissioner of Social Security. P.L. No. 103-296. Pursuant to Fed. R. App. P. 43(c), Shirley S. Chater, Commissioner of Social Security, is substituted for Donna E. Shalala, Secretary of Health and Human Services, as the defendant in this action. Although we have substituted the Commissioner for the Secretary in the caption, in the text we generally refer to the Secretary because she was the appropriate party at the time of the underlying decision.

** This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of the court's General Order filed November 29, 1993. 151 F.R.D. 470.

severe impairment." R. Vol. II at 11. The ALJ determined that, considering the exertional components of these impairments, plaintiff retained a residual functional capacity (RFC) for light and sedentary work. See id. at 14-16, 17. With respect to plaintiff's nonexertional complaints, the ALJ found "[t]he medical evidence establishes that the claimant has mild to moderate depression [and] a personality disorder," id. at 17, as well as a cognitive limitation that precludes her from "understanding, remembering, and carrying out complex and detailed job instructions," id.; see also id. at 14, 16. The ALJ discounted plaintiff's allegations of frequent severe headaches, arthritic pain, and chronic diarrhea, concluding these conditions, to the limited extent substantiated by the record, did not further restrict her ability to do light and sedentary work.

On appeal, plaintiff challenges the sufficiency of the evidence underlying the adverse findings included in the above summary. Considering plaintiff's various contentions in light of the record as a whole, we conclude that the ALJ's basic findings regarding plaintiff's impairments and RFC are supported by the requisite substantial evidence, with one qualification explained below in connection with our critique of the incomplete hypothetical the ALJ posed to the vocational expert. Before addressing that matter, however, we must discuss a related problem that, while not itself dispositive of the outcome here, necessarily frames the ensuing analysis that is controlling.

The ALJ uncritically referred to the occupations of waitress and telephone solicitor as plaintiff's past relevant work, and the

This critical flaw in the ALJ's step-four analysis does not itself require reversal, as the ALJ went on to elicit testimony from the vocational expert establishing the prevalence of the occupations the expert had said plaintiff could perform given her age, education, work experience, and RFC, id. at 53, which is the type of evidence properly used to resolve the question of disability at step five. See generally 20 C.F.R. §§ 404.1520(f) & 404.1566, 416.920(f) & 416.966. The issue of plaintiff's past relevant work, and the ALJ's unjustified assumption that the cited occupations qualified as such, is not pertinent at this stage in the analysis. We therefore consider whether the record can support the denial of benefits at step five.

That, however, brings us to the dispositive error in this case. As noted above, the ALJ properly found that plaintiff suffered from a personality disorder and mild to moderate depression.³ Further, in his Psychiatric Review Technique (PRT) Form, the ALJ noted these conditions caused a slight restriction in plaintiff's daily living activities and moderate difficulty in her social functioning, R. Vol. II at 21, the latter impairment

³ These findings are consistent with the diagnoses of plaintiff's treating physicians at Mental Healthcare Services, Inc., where plaintiff was committed for eleven days in February 1990, and Dr. Inbody, a consulting physician who examined plaintiff in June 1990, see R. Vol. II at 270, 291. In the body of his decision, the ALJ appears to discount the latter's opinions in favor of those of a second consulting physician, Dr. Gordon, which he characterizes as "[more] consistent with the diagnoses of [plaintiff's] treating psychiatrist." Id. at 14. Actually, Dr. Gordon concluded--contrary to plaintiff's treating physicians, Dr. Inbody, and the ALJ himself--that plaintiff "does not have a psychological problem beyond some over-reactivity, (hysterical type behavior) in addition to some dependent tendencies." Id. at 302 (emphasis added).

94-5163, slip op. at 4 (10th Cir. May 19, 1995) (footnote and citations omitted).

Accordingly, this case must be remanded for additional proceedings consistent with the principles expressed herein. "We do not intend here to rule out the possibility that additional, substantial evidence could ultimately demonstrate that the degree of [psychological] impairment involved is either medically de minimis or vocationally inconsequential. On the present record, however, no such finding is sustainable." Id. at 5.

The judgment of the magistrate judge sitting for the United States District Court for the Northern District of Oklahoma is REVERSED. The cause is REMANDED to the district court with directions to remand, in turn, to the Commissioner for further proceedings.

Entered for the Court

John L. Kane, Jr.
District Judge

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
OFFICE OF THE CLERK
BYRON WHITE UNITED STATES COURTHOUSE
1823 STOUT STREET
DENVER, COLORADO 80257
(303) 844-3157

PATRICK FISHER
CLERK

ELISABETH A. SHUMAKER
CHIEF DEPUTY CLERK

July 24, 1995

Mr. Richard M. Lawrence
Clerk
United States District Court for the N. District of Oklahoma
333 W. Fourth Street
Room 411 United States Courthouse
Tulsa, OK 74103

RECEIVED

JUL 27 1995

Re: 94-5149, Limerick v. Shalala
Lower docket: 92-C-857-E,

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Dear Mr. Lawrence:

In accordance with Fed. R. App. P. 41, I enclose a certified copy of the court's order and judgment, which constitutes the mandate in the subject case. By direction of the court, the mandate shall be filed immediately in the records of the trial court or agency.

The clerk will please acknowledge receipt of this mandate by file stamping and returning the enclosed copy of this letter. Any original record will be forwarded to you at a later date.

Please call this office if you have questions.

Sincerely,

PATRICK FISHER
Clerk

By: 
Deputy Clerk

PF:tl

cc:

Paul F. McTighe Jr.
Kathleen Bliss, Asst. U.S. Attorney
Christopher Carillo

FILED

JUL 26 1955

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

Case No. 95-C-488-B

ENTER

DATE JUL 27 1995

Dated this 26 day of July, 1995.

Thomas R. Brett
Chief United States District Judge

FILED

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

DATE JUL 27 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 26 1995

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

ROSCOE HENRY TILLEY,

Petitioner,

vs.

STEVE HARGETT,

Respondent.

No. 93-C-906-B ✓

ENTERED ON DOCKET

DATE JUL 27 1995

ORDER

This is a proceeding on a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner, currently confined in the Oklahoma Department of Corrections challenges his jury conviction for robbery with firearms, after former conviction of a felony, in Craig County District Court, Case No. CRF-86-114. As more fully set out below, the Court concludes that Petitioner's application should be denied.

I. BACKGROUND

Following his jury conviction in September of 1987, Petitioner was sentenced to thirty years imprisonment. On direct appeal, Petitioner argued that his attorney provided ineffective assistance of counsel due to a conflict of interest, that the prosecutor made improper comments during closing arguments, and that the trial court erred in admitting evidence concerning "other crimes." The Oklahoma Court of Criminal Appeals affirmed Petitioner's conviction and sentence in January of 1991.

In his first application for post-conviction relief,

Petitioner challenged the sufficiency of the second page of the information, citing Lovell v. State, 455 P.2d 735 (Okla. Crim. 1969). He argued that the trial court lacked jurisdiction to enhance his sentence because the State failed to file separately the second page of the information prior to trial. The District Court denied Petitioner's application and in January 1993, the Court of Criminal Appeals affirmed, finding that Petitioner had failed to establish that the trial court lacked jurisdiction to enhance his sentence. The Court stated as follows:

The record attached to Appellant's own application contains copies of the Information, the Amended Information and the 2nd Amended Information filed in Case No. CRF-86-114. The 2nd Amended Information, the last Information to be filed, contains a second page that lists four former convictions to be used for enhancement purposes. The 2nd Amended Information is fully endorsed and verified, as are the other Informations, and is file-stamped in the District Court on May 6, 1987, well before Appellant's trial in September, 1987.

In February 1993, Petitioner filed a second amended application for post-conviction relief and alleged that the State failed to present sufficient evidence to establish his prior convictions in the manner set out in the recent opinion of Cooper v. State, 810 P.2d 1303 (Okla. Crim. 1991), which Petitioner asserted constituted an intervening change in the law. He argued that the prior convictions had two different names and therefore the mere introduction of the J & S was insufficient to establish that he committed those prior crimes. Petitioner further argued (a) that the court lacked jurisdiction to enhance his sentence because of an alleged failure to file separately the second page of the second amended information, (b) that Petitioner was deprived of

his right to have the jury correctly instructed on the applicable law, and that his sentence was allegedly improperly enhanced based on two prior convictions arising from the same occurrence. The district court denied relief and the Court of Criminal Appeals affirmed. The Court of Criminal Appeals found that Petitioner had failed to establish why these grounds for relief were not presented or were insufficiently raised in prior proceedings. The Court also found that Petitioner's contention that there had been an intervening change in the law was unfounded.

Thereafter, Petitioner filed the instant petition for a writ of habeas corpus. He alleges (1) that the evidence at the second stage enhancement proceeding was insufficient to establish that Petitioner had prior felony convictions; (2) the jury instructions during the second stage enhancement proceeding were not in compliance with Cooper, 810 P.2d 1303; (3) Petitioner's sentence was improperly enhanced on the basis of two prior convictions from the same transaction; (4) prosecutorial misconduct rendered the trial fundamentally unfair; (5) the trial court lacked jurisdiction to enhance Petitioner's sentence because the state failed to file separately the second page of the information, as set out in Miller v. State, 827 P.2d 883 (Okla. Crim. App. 1992); and (6) Petitioner was denied due process of law during the post-conviction proceedings because the district court summarily dismissed Petitioner's petition without making detailed findings of facts and conclusions of law. Respondent argues that Petitioner's first, second, and third grounds for relief are procedurally barred

because he failed to raise these issues in his direct appeal or in his first application for post-conviction relief. Respondent further argues that prosecutorial misconduct did not occur at petitioner's trial and that Petitioner's fifth and sixth grounds for relief are not cognizable in federal habeas review.

II. ANALYSIS

As a preliminary matter, the Court finds that Petitioner meets the exhaustion requirements of 28 U.S.C. § 2254(b) and (c). See Rose v. Lundy, 455 U.S. 509 (1982). The Court also finds that an evidentiary hearing is not necessary as the issues can be resolved on the basis of the record. See Townsend v. Sain, 372 U.S. 293, 318 (1963), overruled in part by Keeney v. Tamayo-Reyes, 504 U.S. 1 (1992).

A. Procedural Default

The alleged procedural default in this case results from Petitioner's failure to raise his first, second, and third claims in his first application for post-conviction relief and his failure to provide the court sufficient reason for insufficiently raising these claims in prior proceedings.

The doctrine of procedural default prohibits a federal court from considering a specific habeas claim where the states highest court declined to reach the merits of that claim on independent and adequate state procedural grounds, unless a petitioner "demonstrate[s] cause for the default and actual prejudice as a

result of the alleged violation of federal law, or demonstrate[s] that failure to consider the claim[] will result in a fundamental miscarriage of justice." Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546, 2565 (1991); see also Maes v. Thomas, 46 F.3d 979, 985 (10th Cir.), cert. denied, 115 S. Ct. 1972 (1995); Gilbert v. Scott, 941 F.2d 1065, 1067-68 (10th Cir. 1991). "A state court finding of procedural default is independent if it is separate and distinct from federal law." Maes, 46 F.3d at 985. A finding of procedural default is an adequate state ground if it has been applied evenhandedly "'in the vast majority of cases.'" Id. (quoting Andrews v. Deland, 943 F.2d 1162, 1190 (10th Cir. 1991), cert. denied, 502 U.S. 1110 (1992)).

Applying these principles to the instant case, the Court concludes Petitioner's claims are barred by the procedural default doctrine. The state court's procedural bar as applied to Petitioner's claims was an "independent" state ground because "it was the exclusive basis for the state court's holding." Maes, 46 F.3d at 985. Additionally, the procedural bar was an "adequate" state ground because the Oklahoma Court of Criminal Appeals has consistently declined to review claims which were not raised in a first request for post-conviction relief. Okla. Stat. tit. 22, § 1086.

Because of his procedural default, this Court may not consider Petitioner's first, second, and third claims unless he is able to show cause and prejudice for the default, or demonstrate that a fundamental miscarriage of justice would result if his claims are

not considered. See Coleman, 111 S. Ct. at 2565. The cause standard requires a petitioner to "show that some objective factor external to the defense impeded . . . efforts to comply with the state procedural rules." Murray v. Carrier, 477 U.S. 478, 488 (1986). Examples of such external factors include the discovery of new evidence, a change in the law, and interference by state officials. Id. As for prejudice, a petitioner must show "'actual prejudice' resulting from the errors of which he complains." United States v. Frady, 456 U.S. 152, 168 (1982). A "fundamental miscarriage of justice" instead requires a petitioner to demonstrate that he is "actually innocent" of the crime of which he was convicted. McCleskey v. Zant, 499 U.S. 467, 494 (1991).

Petitioner attempts to show cause by alleging that his second application for post-conviction relief was nothing more than an amended petition with new issues and supporting facts, and that the heading of the second application "was merely a typographical error by the typist, in the institutional law library, thinking that the supplemental brief, raising new issues, had to be headed as a second amended application for post-conviction relief." (Doc. #8 at 2.) The Court finds this argument unpersuasive because it is undisputed that Petitioner filed his second application after the Oklahoma Court of Criminal Appeals affirmed the denial of his first application for post-conviction relief.

Petitioner's alternative argument that Cooper v. State represents a change in the law and therefore that his second claim was properly raised for the first time in his second application

for post-conviction fares no better. The Oklahoma Court of Criminal Appeals decided Cooper v. State on April 30, 1991, more than a year prior to the filing of Petitioner's first application for post-conviction relief in Craig County District Court on July 10, 1992.¹ Therefore, Petitioner had more than adequate time to raise those claims in his first application for post-conviction relief.

Petitioner's only other means of gaining federal habeas review is a claim of actual innocence under the fundamental miscarriage of justice exception. Herrera v. Collins, 113 S.Ct. 853, 862 (1993); Sawyer v. Whitley, 112 S. Ct. 2514, 2519-20 (1992). Petitioner, however, does not claim that he is actually innocent of the crime at issue in this habeas action. Therefore, Petitioner's first, second, and third grounds are procedurally barred.

B. Prosecutorial Misconduct

In analyzing "whether a petitioner is entitled to federal habeas relief for prosecutorial misconduct, [a federal habeas court] must determine whether there was a violation of the criminal defendant's federal constitutional rights which so infected the trial with unfairness as to make the resulting conviction a denial of due process." Fero v. Kerby, 39 F.3d 1462, 1473 (10th Cir. 1994) (citing Donnelly v. DeChristoforo, 416 U.S. 637, 643 (1974)), cert. denied, 115 S.Ct. 2278 (1995); see also Coleman v. Saffle,

¹The Court takes judicial notice that Petitioner's first application for post-conviction relief was filed in Craig County District Court on July 10, 1992,

869 F.2d 1377, 1395 (10th Cir. 1989), cert. denied, 494 U.S. 1090 (1990). The factors considered in this due process analysis are: (1) the strength of the state's case; (2) whether the judge gave curative instructions regarding the misconduct; and, (3) the probable effect of the conduct on the jury's deliberative process. Hopkinson v. Shillinger, 866 F.2d 1185, 1210 (10th Cir. 1989), cert. denied, 497 U.S. 1010 (1990).

The first instance of alleged misconduct occurred when the prosecutor made reference to prior crimes evidence involving the Petitioner in Delaware County. The Court finds this reference fails to rise to the level of misconduct because Petitioner was given notice prior to the introduction of this evidence; the Oklahoma Court of Criminal Appeals found the evidence admissible; and Petitioner has not challenged the admissibility of the evidence in the instant case.

The second instance of alleged misconduct involved the prosecutor's action of picking up the rifle used in the crime and aiming it at the jury. While the conduct of the prosecutor was unnecessary, the Court concludes, after reviewing the record in this case, that the action of the prosecutor does not rise to a constitutional violation. The Oklahoma Court of Criminal Appeals addressed this issue and said, "(w)e find that the ... conduct of the prosecutor, while not necessary, (was) not likely to have affected the jury's verdict in light of the strong evidence against him (Petitioner)." (Respondent's Exhibit "A", p. 7). In any event, in the context of the entire trial, the Court finds that the action

of prosecutor in picking up the rifle and aiming it at the jury did not render the trial "fundamentally unfair."

The final instance of alleged prosecutorial misconduct focuses on two comments which the Petitioner claims were uttered solely to "inflame the jury." Both of these comments, as noted by the Oklahoma Court of Criminal Appeals, drew contemporaneous objections which were sustained by the trial court. Most recently in Woodruff v. State, 846 P.2d 1124 (Okla. Crim. App. 1993), cert. denied, 114 S.Ct. 349 (1993), the Oklahoma Court of Criminal Appeals found that comments made by a prosecutor during closing argument which were objected to and sustained, were cured of their prejudicial effect by the court's ruling. This Court agrees. Nevertheless, the Court finds that in the context of the entire trial, the prosecutor's comments did not render the trial fundamentally unfair.

C. Trial Court Lacked Jurisdiction to Enhance Petitioner's Sentence

In his fifth ground for relief, Petitioner alleges that the trial court lacked jurisdiction to enhance his sentence because the state failed to file the second page of the information separately, citing Miller v. State, 827 P.2d 883 (Okla. Crim. App. 1992). While the cited authority supports the proposition that each information must be properly verified and endorsed, as was done in Petitioner's case, the authority does not support Petitioner's contention that the clerk must file-stamp each individual page. In any event, the Court concludes that this issue is not proper for federal habeas review as it involves only state law issues. Engle

v. Isaac, 456 U.S. 107, 119 (1982).

D. Denial of Due Process During Post-Conviction Proceedings

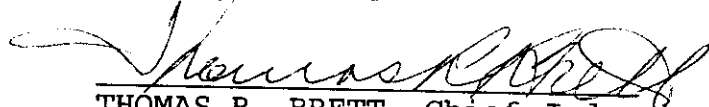
In his last ground for habeas relief, Petitioner contends he was denied due process of law during the post-conviction proceedings because the district court summarily dismissed his second amended application for post-conviction relief without making detailed findings of facts and conclusions of law. To be entitled to federal habeas review, Petitioner must assert that he is held in custody in violation of the Constitution, laws or treaties of the United States. 28 U.S.C. §2254; Engle, 456 U.S. 107, 119 (1982). Because Petitioner has merely challenged the state court's failure to follow its own procedural rules, his allegation is insufficient in and of itself to justify habeas corpus review. See Bell v. Duckworth, 861 F.2d 169 (7th Cir. 1988), cert. denied, 489 U.S. 1088 (1989) ("rule that procedural errors committed in state criminal [proceedings] are not ground for federal habeas corpus cannot be evaded by the facile equation of state procedural error to denial of due process"). Therefore, Petitioner is not entitled to federal habeas relief without further support for his contention that the state court's failure to produce findings of fact and conclusions of law violated his constitutional rights.

III. CONCLUSION

After carefully reviewing the record in this case, the Court

concludes that the Petitioner has not established that he is in custody in violation of the Constitution or laws of the United States. Accordingly, the petition for a writ of habeas corpus is hereby **denied**.

SO ORDERED THIS th26 day of July, 1995.


THOMAS R. BRETT, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 26 1995

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

MURPHY ENTERPRISES, INC.,)
)
Plaintiff,)
)
vs.)
)
MATT ARMSTRONG SHOWS, d/b/a)
MATT ARMSTRONG SHOWS, INC.,)
)
Defendant.)

No. 94-C-231-K

ENTERED ON DOCKET
DATE JUL 27 1995

STIPULATION OF DISMISSAL

All parties who have appeared in this action hereby stipulate that Plaintiff's causes of action against Matt Armstrong Shows, a/k/a M.A.S., Inc., and Matt Armstrong Shows, Inc., d/b/a Matt Armstrong Shows, and Matt Armstrong Shows, d/b/a Matt Armstrong Shows, Inc. be and hereby are dismissed with prejudice.

Respectfully submitted,

RICHARDSON & STOOPS

Date: July 13th 1995

By: Chadwick R. Richardson
Gary L. Richardson, OBA #7547
Chadwick R. Richardson,
OBA #15589
Attorneys for Plaintiff

Autumn Oaks Building
6846 So. Canton, Suite 200
Tulsa, OK 74136-3414
(918) 492-7674

Date: July 12, 1995

Bradford S. Baker
Bradford S. Baker, OBA #440
427 So. Boston, Suite 832
Tulsa, OK 74103
(918) 585-1185
Attorney for Defendants

COPY

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

LIDA NATIONAL YELLOW PAGES
SERVICE, a Missouri Corporation,

Plaintiff,

vs.

GREGORY A. MORRIS, *et al.*,

Defendants.

Richard M. J.
U. S. J.
NORTH

Case No. 93-C-1043-K

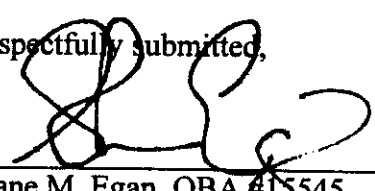
ENTERED ON DOCKET

DATE 27 1995

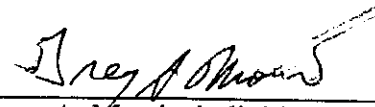
STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff, Lida National Yellow Pages Service ("LIDA"), and Defendants, Gregory A. Morris, individually, Greg Morris & Associates, P.C., Morris and Morris, P.C., A Morris & Morris Law Office of Oklahoma City, P.C., A Morris & Morris Law Office of Salt Lake City, P.C., and Greg Morris Enterprises, Inc. hereby submit, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, this Stipulation of Dismissal and ask that the above-captioned matter be dismissed with prejudice. Each party shall bear its own costs and attorneys' fees.

Respectfully submitted,

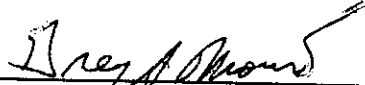

Shane M. Egan, OBA #15545
BOONE, SMITH, DAVIS, HURST & DICKMAN
500 ONEOK Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103-4215
(918) 587-0000

Counsel for Plaintiff LIDA NATIONAL YELLOW
PAGES SERVICE


Gregory A. Morris, individually



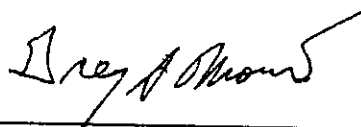
Greg Morris & Associates, P.C.
Gregory A. Morris, President



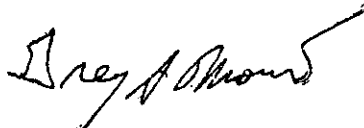
Morris and Morris, P.C.
Gregory A. Morris, President



A Morris & Morris Law Office of Oklahoma City,
P.C.
Gregory A. Morris, President



A Morris & Morris Law Office of Salt Lake City,
P.C.
Gregory A. Morris, as President of



Greg Morris Enterprises, Inc.
Gregory A. Morris, President

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 26 1995

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JOHNATHAN W. NEAL,

Plaintiff,

vs.

STANLEY GLANZ, et al.,

Defendants.

No. 95-C-0554-E

ENTERED ON DOCKET

DATE JUL 27 1995

ORDER

Plaintiff, an inmate at the Tulsa County Jail, has filed with the Court This civil rights complaint, pursuant to 42 U.S.C. § 1983, and a motion for leave to proceed in forma pauperis, pursuant to 28 U.S.C. § 1915. In reliance upon the representations set forth in the motion, the Court concludes that Plaintiff should be granted leave to proceed in forma pauperis. The Court concludes, however, that Plaintiff's claims should be dismissed as frivolous under 28 U.S.C. § 1915(d).

In this civil rights action, Plaintiff sues the Tulsa County Sheriff Department and five deputy officers for refusing to hand him a dinner tray, denying him a phone call, forcing him to move to another cell while he was eating his peanut butter sandwich, and spraying him with pepper gas. Plaintiff seeks \$150,000 in damages and an order directing his release from the Tulsa County Jail.

The federal in forma pauperis statute is designed to ensure that indigent litigants have meaningful access to the federal courts without prepayment of fees or costs. Neitzke v. Williams, 490 U.S. 319, 324 (1989); 28 U.S.C. § 1915(d). To prevent abusive litigation, however, section 1915(d) allows a federal court to


dismiss an in forma pauperis suit if the suit is frivolous. See 28 U.S.C. § 1915(d). A suit is frivolous if "it lacks an arguable basis in either law or fact." Neitzke, 490 U.S. at 325; Olson v. Hart, 965 F.2d 940, 942 n.3 (10th Cir. 1992). A suit is legally frivolous if it is based on "an indisputably meritless legal theory." Denton v. Hernandez, 112 S. Ct. 1728, 1733 (1992) (quoting Neitzke, 490 U.S. at 327). A complaint is factually frivolous, on the other hand, if "the factual contentions are clearly baseless." Id.

After liberally construing Plaintiff's pro se pleadings, see Haines v. Kerner, 404 U.S. 519, 520-21 (1972); Hall v. Bellmon, 935 F.2d 1106, 1100 (10th Cir. 1991), the Court concludes that Plaintiff's allegations lack any arguable basis in either law or fact. The temporary denial of a dinner tray and a phone call does not amount to the subjection to punishment under the Fourteenth Amendment or the subjection to "cruel and unusual punishment" under the Eighth Amendment.¹ Moreover, de minimis application of force, such as the use of pepper gas in this case, is excluded from the Eighth Amendment's cruel and unusual punishment calculation. Hudson v. McMillian, 503 U.S. 1, 9-10, 112 S.Ct. 995, 1000 (1992); see also Sampley v. Ruetters, 704 F.2d 491, 494 (10th Cir. 1983); El'Amin v. Pearce, 750 F.2d 829 (10th Cir. 1984).

¹As it is unclear whether Plaintiff was a pretrial detainee or a convicted inmate during the events at issue in this case, the Court has analyzed Plaintiff's claims under both the Fourteenth and the Eighth Amendments. See Bell v. Wolfish, 441 U.S. 520 (1979) (the Fourteenth Amendment Due Process Clause, not the Eighth Amendment's safeguard against cruel and unusual punishment, protects pretrial detainees).

Therefore, Plaintiff's complaint is hereby dismissed as frivolous under 28 U.S.C. § 1915(d).

IT IS SO ORDERED this 26th day of July, 1995.


JAMES O. ELLISON, Senior Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, and)
FRANK DESHAZO, Revenue Agent,)
Internal Revenue Service,)
Petitioners,)

v.)

ROCKY MCINTOSH,)
Commissioner of Public Gaming,)
Muscogee (Creek) Nation,)

Respondent.)

ENTERED ON DOCKET
DATE JUL 27 1995

No. 95-C-602K

FILED

JUL 26 1995

Richard M. Lawre Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

The Court has been advised that the petitioners, United States of America and Frank DeShazo, have dismissed and withdrawn their petition to enforce an Internal Revenue Service summons, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure. This dismissal is without prejudice. Because the petition has been dismissed and withdrawn, the hearing that had been scheduled for August 2, 1995, is cancelled.

s/ TERRY C. KERN

TERRY C. KERN
United States District Judge

Dated: July 26, 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE JUL 27 1995

JOHNNY L. SHAVERS,
Petitioner,
vs.
RON CHAMPION,
Respondent.

No. 95-C-440-K

FILED

JUL 28 1995

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

On June 14, 1995, the Court denied Petitioner's motion for leave to proceed in forma pauperis because he had cash and securities in his prison accounts exceeding \$200.00, and granted him thirty days to submit the requisite filing fee. As of the date of this order, Petitioner has neither submitted the \$5.00 filing fee nor requested an extension of time to do so. Accordingly, the instant action is hereby **dismissed without prejudice** for failure to pay the filing fee. The Clerk shall **mail** to Petitioner a copy of his petition for a writ of habeas corpus.

SO ORDERED THIS 26 day of July, 1995.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE JUL 27 1995

TERRY V. BRYAN,

Plaintiff,

vs.

PUBLIC SERVICE COMPANY OF OKLAHOMA,

Defendant.

Case No. 94-C-966-K

FILED

JUL 26 1995

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

O R D E R

The above captioned case is dismissed without prejudice pursuant to this Court's Order at the June 13, 1995 Case management Conference for failure of Plaintiff to cause new counsel to enter an appearance or file a statement to proceed in propria persona on or before June 8, 1995.

IT IS SO ORDERED THIS 26 DAY OF JULY, 1995.


TERRY C. KERN
UNITED STATES DISTRICT JUDGE

FILED

United States District Court

JUL 26 1995

Richard M. Lawrence, Clerk
U.S. District Court
Northern District of Oklahoma

NORTHERN

DISTRICT OF

OKLAHOMA

EDD 7/26/95

JUDGMENT IN A CIVIL CASE

DAVID L. DAVIS

v.

GROUP K, INC., ET AL.,

CASE NUMBER: 93-C-1098-K ✓

- ☒ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- ☐ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

7-26-95

Date

RICHARD M. LAWRENCE

Clerk

N. Harris

(By) Deputy Clerk

40

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KATHY J. JOHNSON aka Kathy Jean
Johnson aka Kathy Johnson fka Kathy J.
Metz;

UNKNOWN SPOUSE of Kathy J.
Johnson, if any;

BANK IV OKLAHOMA, N.A. as
successor to Admiral State Bank;
GENERAL ELECTRIC MORTGAGE
INSURANCE CORPORATION, nka
General Electric Capital Mortgage
Services;

COUNTY TREASURER, Tulsa County,
Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

JUL 25 1995

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

Civil Case No. 94-C-1131-B

ENTERED ON DOCKET

DATE JUL 26 1995

ORDER

Upon the Motion of the United States of America, acting on behalf of the Secretary of Housing and Urban Development, by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, and for good cause shown it is hereby **ORDERED** that the Entry of Default By Court Clerk filed on the 5th day of July, 1995 and the Judgment of Foreclosure entered herein on the 10th day of July, 1995, are vacated and this action shall be dismissed without prejudice.

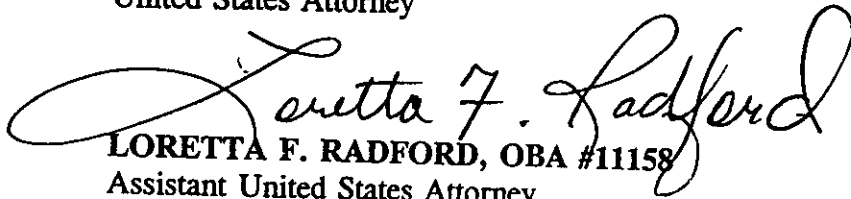
Dated this 25 day of July, 1995.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney

A large, stylized handwritten signature in black ink, reading "Loretta F. Radford". The signature is written over the printed name and title of the signatory.

LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney

3460 U.S. Courthouse

Tulsa, Oklahoma 74103

(918) 581-7463

LFR:flv

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 25 1995

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

VIRGIL PRESTON WATTS,

Petitioner,

vs.

RON WARD,

Respondent.

No. 95-C-610-B ✓

ENTERED ON DOCKET

DATE JUL 26 1995

ORDER

This matter comes before the Court on Petitioner's request to dismiss this action without prejudice (submitted in letter form).

Having reviewed the file in this case, the Court concludes that Petitioner's motion should be granted. Accordingly, this habeas action is hereby **dismissed without prejudice**.

IT IS SO ORDERED.

This 25 day of July, 1995.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

VIRGIL PRESTON WATTS,

Petitioner,

vs.

RON WARD,

Respondent.

No. 95-C-609-H

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET

JUL 26 1995

DATE

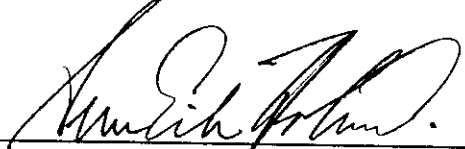
ORDER

This matter comes before the Court on Petitioner's request to dismiss this action without prejudice (submitted in letter form).

Having reviewed the file in this case, the Court concludes that Petitioner's motion should be granted. Accordingly, this habeas action is hereby **dismissed without prejudice**.

IT IS SO ORDERED.

This 25th day of July, 1995.


Sven Erik Holmes
United States District Judge

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
on behalf of the Small Business Administration and
the Department of Housing and Urban Development,

Plaintiff,

vs.

MARY K. WESTMORELAND
aka Mary Kathy Westmoreland
fka Mary Kathy Hendricks;
THE UNKNOWN HEIRS, EXECUTORS,
ADMINISTRATORS, DEVISEES,
TRUSTEES, SUCCESSORS AND
ASSIGNS OF BENNY WESTMORELAND
aka Benny Ross Westmoreland,
Deceased;
LLOYD ORAN PHILLIPS
aka Lloyd Owen Phillips aka Lloyd Oren Phillips
aka Lloyd O. Phillip;
BETTY LaVONNE TODD
fka Betty LaVonne Sharp fka Betty LaVonne Phillips
fka Betty L. Phillips;
LONGVIEW LAKE ASSOCIATION, INC.;
LEONA WILLIAMS;
STATE OF OKLAHOMA ex rel.
Oklahoma Tax Commission;
PUBLIC SERVICE COMPANY OF
OKLAHOMA;
CITY OF TULSA, Oklahoma;
COUNTY TREASURER, Tulsa County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma;
NORMAN DELL TODD,

Defendants.

FILED

JUL 25 1995

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE JUL 26 1995

CIVIL ACTION NO. 94-C-240-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 25 day of July,
1995. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern

NOTED

RECEIVED
UPON RECEIPT

District of Oklahoma, through Cathryn D. McClanahan, Assistant United States Attorney; the Defendants, **County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma**, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; the Defendant, **Longview Lake Association, Inc.**, appears not, having previously filed its Disclaimer; the Defendant, **Leona Williams**, appears by her attorney Gary J. Dean; the Defendant, **State of Oklahoma ex rel. Oklahoma Tax Commission**, appears by its attorney Kim D. Ashley; the Defendant, **Public Service Company of Oklahoma**, appears by its attorney Daniel M. Webb; the Defendant, **City of Tulsa, Oklahoma**, appears by its attorney Russell R. Linker II; and the Defendants, **Mary K. Westmoreland aka Mary Kathy Westmoreland fka Mary Kathy Hendricks; The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Benny Westmoreland aka Benny Ross Westmoreland, Deceased; Lloyd Oran Phillips aka Lloyd Owen Phillips aka Lloyd Oren Phillips aka Lloyd O. Phillips; Betty LaVonne Todd fka Betty LaVonne Sharp fka Betty LaVonne Phillips fka Betty L. Phillips; and Norman Dell Todd**, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, **Mary K. Westmoreland aka Mary Kathy Westmoreland fka Mary Kathy Hendricks**, acknowledged receipt of Summons and Complaint on or before April 11, 1994 and also was served with Summons and Complaint by certified mail, return receipt requested, delivery restricted to the addressee on June 6, 1994; that the Defendant, **Lloyd Oran Phillips aka Lloyd Owen Phillips aka Lloyd Oren Phillips aka Lloyd O. Phillips**, was served by the United States Marshal's Office with Summons and Amended Complaint on December 30, 1994; that the Defendant, **Betty LaVonne Todd fka Betty LaVonne Sharp fka Betty LaVonne Phillips fka Betty L. Phillips**, executed a Waiver of Service of

Summons on August 12, 1994; that the Defendant, **Longview Lake Association, Inc.**, acknowledged receipt of Summons and Complaint on March 16, 1994; that the Defendant, **Leona Williams**, acknowledged receipt of Summons and Complaint on April 6, 1994; that the Defendant, **State of Oklahoma ex rel. Oklahoma Tax Commission**, acknowledged receipt of Summons and Complaint on March 21, 1994; that the Defendant, **Public Service Company of Oklahoma**, filed its Entry of Appearance on May 3, 1994; that the Defendant, **City of Tulsa, Oklahoma**, acknowledged receipt of Summons and Complaint on March 17, 1994; that the Defendant, **County Treasurer, Tulsa County, Oklahoma**, acknowledged receipt of Summons and Complaint on March 23, 1994; that the Defendant, **Board of County Commissioners, Tulsa County, Oklahoma**, acknowledged receipt of Summons and Complaint on March 17, 1994; that the Defendant, **Norman Dell Todd**, executed a Waiver of Service of Summons on August 12, 1994.

The Court further finds that the Defendants, **The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Benny Westmoreland aka Benny Ross Westmoreland, Deceased**, were served by publishing notice of this action in the **Tulsa Daily Commerce & Legal News**, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning March 9, 1995, and continuing through April 13, 1995, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, **The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Benny Westmoreland aka Benny Ross Westmoreland, Deceased**, and service cannot be made

upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, **The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Benny Westmoreland aka Benny Ross Westmoreland, Deceased.** The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Small Business Administration and the Department of Housing and Urban Development, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Cathryn D. McClanahan, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, **County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma,** filed their Answers on April 5, 1994; that the Defendant, **Longview Lake Association, Inc.,** filed its Disclaimer June 26, 1995; that the Defendant, **Leona Williams,** filed her Answer and Counterclaim on April 15, 1994 and her Amended Answer and Counterclaim on October 27, 1994; that the

Defendant, **State of Oklahoma ex rel. Oklahoma Tax Commission**, filed its Answer on April 12, 1994 and its Response to Plaintiff's Amended Petition on August 16, 1994; that the Defendant, **Public Service Company of Oklahoma**, filed its Answer on March 25, 1994; that the Defendant, **City of Tulsa, Oklahoma**, filed its Answer on March 23, 1994 and its Answer to Amended Complaint on August 8, 1994; and that the Defendants, **Mary K. Westmoreland aka Mary Kathy Westmoreland fka Mary Kathy Hendricks; The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Benny Westmoreland aka Benny Ross Westmoreland, Deceased; Lloyd Oran Phillips aka Lloyd Owen Phillips aka Lloyd Oren Phillips aka Lloyd O. Phillips; Betty LaVonne Todd fka Betty LaVonne Sharp fka Betty LaVonne Phillips fka Betty L. Phillips; and Norman Dell Todd**, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on September 8, 1992, Lloyd Oran Phillips filed his voluntary petition in bankruptcy in Chapter 13 in the United States Bankruptcy Court, Western District of Oklahoma, Case No. 92-15942-BH. On January 12, 1993, the United States Bankruptcy Court for the Western District of Oklahoma entered its Order of Dismissal dismissing Case No. 92-15942-BH. Subsequently, Case No. 92-15942-BH was closed on January 27, 1993.

The Court further finds that on August 5, 1993, Lloyd Oran Phillips filed his voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 93-02589-W. On November 22, 1993, a Discharge of Debtor was entered discharging the debtor from all dischargeable debts. Subsequently, Case No. 93-02589-W was closed on March 9, 1994.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of mortgages securing said mortgage notes upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Twenty-three (23), Block One (1), LONGVIEW LAKE ESTATES, BLOCKS 1 THRU 14 INCLUSIVE, an Addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

LESS

A part of Lot 23, Block 1, of the Longview Lake Estates Addition to the City of Tulsa, Tulsa County, Oklahoma, more particularly described as follows: Beginning at the Southwest corner of said Lot 23; thence Easterly along the South line of said Lot 23 to a point which is 39.00 feet Southeasterly and radial to the centerline of Mingo Road; thence Northeasterly to the Northwest corner of said Lot 23; thence Southerly along the West line of said Lot 23 to the point of beginning, containing 835 feet more or less.

The Court further finds that on August 29, 1978, Larry D. Cooke and Betty R. Cooke executed and delivered to Commercial National Mortgage Co., their mortgage note in the amount of \$55,650.00, payable in monthly installments, with interest thereon at the rate of 9.50 percent per annum.

The Court further finds that as security for the payment of the above-described note, Larry D. Cooke and Betty R. Cooke executed and delivered to Commercial National Mortgage Co., a real estate mortgage dated August 29, 1978, covering the following described property, situated in the State of Oklahoma, Tulsa County:

Lot Twenty-three (23), Block One (1), LONGVIEW LAKE ESTATES, BLOCKS 1 THRU 14 INCLUSIVE, an Addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

This mortgage was recorded on August 31, 1978, in Book 4350, Page 883, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 29, 1981, Larry D. Cooke and Betty R. Cooke, husband and wife, executed a General Warranty Deed to William F. Hendricks and Mary Kathy Hendricks, husband and wife, conveying all their interest in the subject real property. This General Warranty Deed was recorded on July 2, 1981, in Book 4554, Page 2068, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 19, 1982, William F. Hendricks and Mary Kathy Hendricks, husband and wife, executed a General Warranty Deed to the City of Tulsa, Oklahoma, a municipal corporation, conveying the following described property:

A part of Lot 23, Block 1, of the Longview Lake Estates Addition to the City of Tulsa, Tulsa County, Oklahoma, more particularly described as follows: Beginning at the Southwest corner of said Lot 23; thence Easterly along the South line of said Lot 23 to a point which is 39.00 feet Southeasterly and radial to the centerline of Mingo Road; thence Northeasterly to the Northwest corner of said Lot 23; thence Southerly along the West line of said Lot 23 to the point of beginning, containing 835 feet more or less.

This General Warranty Deed was recorded on December 21, 1982, in Book 4657, Page 1875, in the records of Tulsa County, Oklahoma.

The Court further finds that on December 13, 1982, Commercial National Mortgage Company of Little Rock, Arkansas, executed a Partial Release of Mortgage releasing the land of the above-described property given to the City of Tulsa, Oklahoma.

The Court further finds that on September 7, 1989, Commercial National Mortgage Company assigned the above-described mortgage note and mortgage to the

Secretary of Housing and Urban Development of Washington, D.C., its successors and assigns. This Assignment of Mortgage was recorded on September 14, 1989, in Book 5207, Page 1128, in the records of Tulsa County, Oklahoma.

The Court further finds that on July 24, 1984, William F. Hendricks and Mary K. Hendricks executed and delivered to the United States of America, on behalf of the Small Business Administration, their mortgage note in the amount of \$46,000.00, payable in monthly installments, with interest thereon at the rate of 4 percent per annum.

The Court further finds that as security for the payment of the above-described note, William F. Hendricks and Mary Kathy Hendricks executed and delivered to the United States of America, on behalf of the Small Business Administration, a real estate mortgage dated July 24, 1984, covering the following described property, situated in the State of Oklahoma, Tulsa County:

Lot Twenty-three (23), Block One (1), LONGVIEW LAKE ESTATES BLOCKS 1 THRU 14 INCLUSIVE, an Addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

This mortgage was recorded on July 24, 1984, in Book 4805, Page 2566, in the records of Tulsa County, Oklahoma.

The Court further finds that the **Assignment of Mortgage** executed by Commercial National Mortgage Company to the Secretary of Housing and Urban Development of Washington, D.C., its successors and assigns, dated September 7, 1989, and recorded on September 14, 1989, in Book 5207, Page 1128, in the records of Tulsa County, Oklahoma, and the **Mortgage** executed by William F. Hendricks and Mary Kathy Hendricks to Small Business Administration, dated July 24, 1984 and recorded on July 24, 1984, in

Book 4805, Page 2566, in the records of Tulsa County, Oklahoma, **did not** include the description of the property that had been conveyed to the City of Tulsa, Oklahoma, by General Warranty Deed, dated November 19, 1982, and recorded on December 21, 1982, in Book 4657, Page 1875 in the records of Tulsa County, Oklahoma. Commercial National Mortgage Company had released this portion of the property from its mortgage but due to a scrivener's error failed to state the released portion of land on its assignment to the Secretary of Housing and Urban Development. Also, due to a scrivener's error the released portion of land was not stated on the subject mortgage to the Small Business Administration. The correct legal description should reflect the land conveyed to the City of Tulsa, Oklahoma. Therefore, the Court further finds that the assignment of mortgage and mortgage should be reformed to include the legal description of the land conveyed to the City of Tulsa, Oklahoma. The correct legal description should read as follows:

Lot Twenty-three (23), Block One (1), LONGVIEW LAKE ESTATES, BLOCKS 1 THRU 14 INCLUSIVE, an Addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

LESS

A part of Lot 23, Block 1, of the Longview Lake Estates Addition to the City of Tulsa, Tulsa County, Oklahoma, more particularly described as follows: Beginning at the Southwest corner of said Lot 23; thence Easterly along the South line of said Lot 23 to a point which is 39.00 feet Southeasterly and radial to the centerline of Mingo Road; thence Northeasterly to the Northwest corner of said Lot 23; thence Southerly along the West line of said Lot 23 to the point of beginning, containing 835 feet more or less.

The Court further finds that on May 21, 1985, William Frank Hendricks executed a Quit-Claim Deed conveying all his interest in the subject real property to Mary Kathy Hendricks. This Quit-Claim Deed was recorded on May 22, 1985, in Book 4864, Page 1486, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 15, 1994, Small Business Administration released William F. Hendricks from all liability on the above-described note and mortgage. William F. Hendricks aka William Frank Hendricks was dismissed from subject foreclosure action by Order filed on August 1, 1994.

The Court further finds that on December 17, 1988, Mary Kathy Westmoreland and Benny Westmoreland, her husband, executed a General Warranty Deed conveying all their interest to the subject real property to Lloyd Oran Phillips and Betty L. Phillips who are the current assumptors of the subject indebtedness to the Secretary of Housing and Urban Development. This General Warranty Deed was recorded on December 30, 1988, in Book 5158, Page 1457, in the records of Tulsa County, Oklahoma.

The Court further finds that Benny Westmoreland aka Benny Ross Westmoreland died on November 10, 1992. A copy of the Certificate of Death No. 142-92-107104 issued by the Texas State Department of Health certifying Benny Ross Westmoreland's death was attached as Exhibit "F" in Plaintiff's Amended Complaint and incorporated.

The Court further finds that the Defendants, **Lloyd Oran Phillips aka Lloyd Owen Phillips aka Lloyd Oren Phillips aka Lloyd O. Phillips and Betty LaVonne Todd fka Betty LaVonne Sharp fka Betty LaVonne Phillips fka Betty L. Phillips**, made default under the terms of the aforesaid note and mortgage held by the Secretary of Housing and Urban Development by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, **Lloyd Oran Phillips aka Lloyd Owen Phillips aka Lloyd Oren Phillips aka Lloyd O. Phillips and Betty LaVonne Todd fka Betty LaVonne Sharp fka Betty LaVonne Phillips fka Betty L.**

Phillips, are indebted to the Plaintiff in the principal sum of \$76,479.46, plus interest at the rate of 9.5 percent per annum from January 1, 1994, until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, **Mary K. Westmoreland aka Mary Kathy Westmoreland fka Mary Kathy Hendricks**, made default under the terms of the aforesaid note and mortgage held by the Small Business Administration by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, **Mary K. Westmoreland aka Mary Kathy Westmoreland fka Mary Kathy Hendricks**, is indebted to the Plaintiff in the principal sum of \$34,948.14, plus accrued interest in the amount of \$3,415.71 as of July 27, 1994, plus interest accruing thereafter at the rate of 4 percent per annum or \$3.83 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, **County Treasurer, Tulsa County, Oklahoma**, has liens on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$123.69 which became a lien on the property as of 1992 (\$62.22) and 1993 (\$61.47).

The Court further finds that the Defendant, **Board of County Commissioners, Tulsa County, Oklahoma**, claims no right, title or interest in the subject real property.

The Court further finds that the Defendant, **Longview Lake Association, Inc.**, disclaims any right, title or interest in the real property.

The Court further finds that the Defendant, **Leona Williams**, has a lien on the property which is the subject matter of this action in the amount of \$9,901.97, plus interest at 12.35 percent per annum from November 28, 1990, plus \$1,000.00 for attorney fees, plus

costs accrued and accruing, by virtue of an Affidavit of Judgment, Case No. C-90-442, District Court, Mayes County, State of Oklahoma, dated December 31, 1990, and recorded on January 2, 1991, in Book 5297, Page 1297 in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, **State of Oklahoma ex rel. Oklahoma Tax Commission**, has liens on the property which is the subject matter of this action in the total amount of \$3,162.84 together with interest and penalty according to law, by virtue of Tax Warrant No. STX 17140, dated January 28, 1982, and recorded on March 18, 1982, in Book 4601, Page 1076 in the records of Tulsa County, Oklahoma, in the amount of \$1,425.34 together with interest and penalty according to law; and by virtue of Tax Warrant No. STX 19060, dated June 1, 1982, and recorded on June 14, 1982, in Book 4619, Page 769 in the records of Tulsa County, Oklahoma, in the amount of \$2,187.50 together with interest and penalty according to law.

The Court further finds that the Defendant, **Public Service Company of Oklahoma**, has a lien on the property which is the subject matter of this action in the amount of \$ 746.58, plus interest at the rate of 15% percent per annum from 5-8-86, plus \$ 84.00 for attorney fees, plus costs accrued and accruing, by virtue of Journal Entry of Judgment, Case No. SC-86-06066, dated May 8, 1986, and filed on May 8, 1986, in District Court, Tulsa County, State of Oklahoma; and by virtue of an Execution, Case No. SC-86-06066, dated May 2, 1991, and filed May 8, 1991, in District Court, Tulsa County, State of Oklahoma, and recorded on May 8, 1991, in Book 5320, Page 0858 in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, **City of Tulsa, Oklahoma**, is the owner of the part of Lot 23 as described in the Warranty Deed recorded in Book 4657, Page

1875, Tulsa County Clerk, free and clear of the mortgages being foreclosed herein and the Court further finds that the Defendant, City of Tulsa, Oklahoma, disclaims any interest in the remaining part of Lot 23 not conveyed to it by said deed.

The Court further finds that the Defendants, Mary K. Westmoreland aka Mary Kathy Westmoreland fka Mary Kathy Hendricks; The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Benny Westmoreland aka Benny Ross Westmoreland, Deceased; Lloyd Oran Phillips aka Lloyd Owen Phillips aka Lloyd Oren Phillips aka Lloyd O. Phillips; Betty LaVonne Todd fka Betty LaVonne Sharp fka Betty LaVonne Phillips fka Betty L. Phillips; and Norman Dell Todd, are in default and therefore have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Department of Housing and Urban Development, have and recover judgment against the Defendants, Lloyd Oran Phillips aka Lloyd Owen Phillips aka Lloyd Oren Phillips aka Lloyd O. Phillips and Betty LaVonne Todd fka Betty LaVonne Sharp fka Betty LaVonne Phillips fka Betty L. Phillips, in the principal sum of \$76,479.46, plus interest at the rate of 9.5 percent per annum from January 1, 1994, until judgment, plus interest thereafter at the current legal rate of 5.70 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property and any other advances.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Small Business Administration, have and recover judgment against the Defendant, **Mary K. Westmoreland aka Mary Kathy Westmoreland fka Mary Kathy Hendricks**, in the principal sum of \$34,948.14, plus accrued interest in the amount of \$3,415.71 as of July 27, 1994, plus interest accruing thereafter at the rate of 4 percent per annum or \$3.83 per day until judgment, plus interest thereafter at the current legal rate of 5.70 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property and any other advances.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Assignment of Mortgage executed by Commercial National Mortgage Company to the Secretary of Housing and Urban Development of Washington, D.C., its successors and assigns, dated September 7, 1989, and recorded on September 14, 1989, in Book 5207, Page 1128, in the records of Tulsa County, Oklahoma, and the Mortgage executed by William F. Hendricks and Mary Kathy Hendricks to Small Business Administration, dated July 24, 1984 and recorded on July 24, 1984, in Book 4805, Page 2566, in the records of Tulsa County, Oklahoma, be reformed to include the description of the property that had been conveyed to the City of Tulsa, Oklahoma, by General Warranty Deed, dated November 19, 1982, and recorded on December 21, 1982, in Book 4657, Page 1875 in the records of Tulsa County, Oklahoma. The correct legal description should read as follows:

Lot Twenty-three (23), Block One (1), LONGVIEW LAKE
ESTATES BLOCKS 1 THRU 14 INCLUSIVE, an Addition in
Tulsa County, State of Oklahoma, according to the recorded plat
thereof.
LESS

A part of Lot 23, Block 1, of the Longview Lake Estates Addition to the City of Tulsa, Tulsa County, Oklahoma, more particularly described as follows: Beginning at the Southwest corner of said Lot 23; thence Easterly along the South line of said Lot 23 to a point which is 39.00 feet Southeasterly and radial to the centerline of Mingo Road; thence Northeasterly to the Northwest corner of said Lot 23; thence Southerly along the West line of said Lot 23 to the point of beginning, containing 835 feet more or less.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$123.69, plus penalties and interest, for personal property taxes for the years 1992 (\$62.22) and 1993 (\$61.47).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Leona Williams, have and recover judgment against Lloyd O. Phillips and Betty L. Phillips nka Betty L. Todd in the amount of \$9,901.97, plus interest at 12.35 percent per annum from November 28, 1990, plus \$1,000.00 for attorney fees, plus costs accrued and accruing, by virtue of an Affidavit of Judgment, Case No. C-90-442, District Court, Mayes County, State of Oklahoma, dated December 31, 1990, and recorded on January 2, 1991, in Book 5297, Page 1297 in the records of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, have and recover in rem judgment against Lloyd O. Phillips in the amount of \$3,612.84 together with interest and penalty according to law, by virtue of Tax Warrant No. STX 17140, dated January 28, 1982, and recorded on March 18, 1982, in Book 4601, Page 1076 in the records of Tulsa County, Oklahoma, in the amount of \$1,425.34 together with interest and penalty according to law; and by virtue of Tax Warrant No. STX 19060, dated June 1, 1982, and recorded on June 14,

1982, in Book 4619, Page 769 in the records of Tulsa County, Oklahoma, in the amount of \$2,187.50 together with interest and penalty according to law.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **Public Service Company of Oklahoma**, have and recover judgment against Lloyd Phillips in the amount of \$ 746.58, plus interest at the rate of 15⁹⁰ percent per annum from 5-8-86, plus \$ 84.00 for attorney fees, plus costs accrued and accruing, by virtue of Journal Entry of Judgment, Case No. SC-86-06066, dated May 8, 1986, and filed on May 8, 1986, in District Court, Tulsa County, State of Oklahoma; and by virtue of an Execution, Case No. SC-86-06066, dated May 2, 1991, and filed May 8, 1991, in District Court, Tulsa County, State of Oklahoma, and recorded on May 8, 1991, in Book 5320, Page 0858 in the records of Tulsa County, Oklahoma

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **City of Tulsa, Oklahoma**, is the owner of the part of Lot 23 as described in the Warranty Deed recorded in Book 4657, Page 1875, Tulsa County Clerk, free and clear of the mortgages being foreclosed herein and that the Defendant, **City of Tulsa, Oklahoma**, has no other right, title or interest in the remaining part of Lot 23 not conveyed to it by said deed.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, **Mary K. Westmoreland aka Mary Kathy Westmoreland fka Mary Kathy Hendricks; The Unknown Heirs, Executors, Administrators, Devisees, Trustees, Successors and Assigns of Benny Westmoreland aka Benny Ross Westmoreland, Deceased; Lloyd Oran Phillips aka Lloyd Owen Phillips aka Lloyd Oren Phillips aka Lloyd O. Phillips; Betty LaVonne Todd fka Betty LaVonne Sharp fka Betty LaVonne**

Phillips fka Betty L. Phillips; Norman Dell Todd; Longview Lake Association, Inc.; and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff, Department of Housing and Urban Development;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff, Small Business Administration;

Fourth:

In payment of the judgment rendered herein in favor of the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission;

Fifth:

In payment of the judgment rendered herein in favor of the Defendant, Leona Williams;

Sixth:

In payment of the judgment rendered herein in favor of the Defendant, Public Service Company of Oklahoma;

Seventh:

In payment of the judgment rendered herein in favor of the Defendant, County Treasurer, Tulsa County, Oklahoma.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


CATHRYN D. MCCLANAHAN, OBA #014853
Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

USA v. Mary K. Westmoreland, et al.
Judgment of Foreclosure
Case No. 94-C-240-B

CDM:css



DICK A. BLAKELEY, OBA #852

Assistant District Attorney

406 Tulsa County Courthouse

Tulsa, OK 74103

(918) 596-4841

Attorney for Defendants,

County Treasurer and

Board of County Commissioners,

Tulsa County, Oklahoma

USA v. Mary K. Westmoreland, et al.

Judgment of Foreclosure

Case No. 94-C-240-B

CDM:css



GARY J. DEAN, OBA # 2248

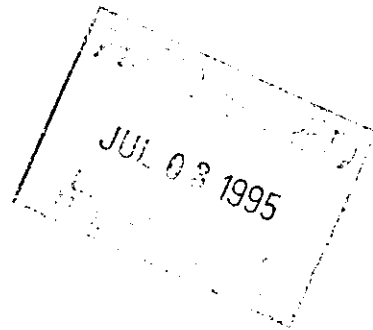
P.O. Drawer 1047

Pryor, OK 74362-1047

(918) 825-7400

Attorney for Defendant,

Leona Williams



USA v. Mary K. Westmoreland, et al.

Judgment of Foreclosure

Case No. 94-C-240-B

CDM:css



KIM D. ASHLEY, OBA #14175

Assistant General Counsel

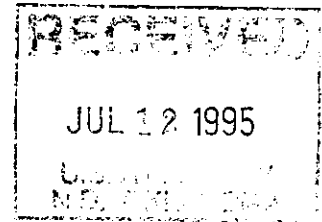
P.O. Box 53248

Oklahoma City, OK 73152-3248

(405) 521-3141

Attorney for Defendant,

State of Oklahoma ex rel. Oklahoma Tax Commission




USA v. Mary K. Westmoreland, et al.

Judgment of Foreclosure

Case No. 94-C-240-B

CDM:css



DANIEL M. WEBB, OBA #11003

Mapco Plaza Building

HB 1717 South Boulder, Suite ~~200~~ 900

Tulsa, Oklahoma 74119

(918) 582-3191

Attorney for Defendant,

Public Service Company of Oklahoma

USA v. Mary K. Westmoreland, et al.

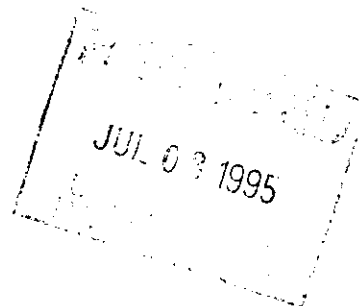
Judgment of Foreclosure

Case No. 94-C-240-B

CDM:css


RUSSELL R. LINKER II, OBA #5444

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(918) 596-7717
Attorney for Defendant,
City of Tulsa, Oklahoma



USA v. Mary K. Westmoreland, et al.
Judgment of Foreclosure
Case No. 94-C-240-B

CDM:css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 28 1995

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES W. STRIEGEL aka James N.
Striegel; UNKNOWN SPOUSE OF
James W. Striegel aka James N. Striegel,
if any; DONNA STRIEGEL aka Donna G.
M. Striegel aka Donna M. Striegel;
UNKNOWN SPOUSE OF Donna Striegel
aka Donna G. M. Striegel aka Donna M.
Striegel, if any; LOUIS E. STRIEGEL;
MARGARET S. STRIEGEL; CENTURY
XXI EAST, INC.; COUNTY
TREASURER, Tulsa County, Oklahoma;
BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

Civil Case No. 95-C 0110B

ENTERED ON DOCKET

DATE JUL 28 1995

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 25 day of July,

1995. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; the Defendant, MARGARET S. STRIEGEL, appears not having previously filing a Disclaimer; and the Defendants, JAMES W. STRIEGEL aka James N. Striegel, UNKNOWN SPOUSE OF James W. Striegel aka James N. Striegel who is the same person as CATHY STRIEGEL, DONNA STRIEGEL aka Donna G. M. Striegel aka Donna M. Striegel, UNKNOWN SPOUSE OF Donna Striegel aka

NOTED

PROV
UPON

Donna G. M. Striegel aka Donna M. Striegel, if any, CENTURY XXI EAST, INC., and LOUISE E. STRIEGEL, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendants, JAMES W. STRIEGEL aka James N. Striegel and UNKNOWN SPOUSE OF James W. Striegel aka James N. Striegel who is the same person as CATHY STRIEGEL, were each served with process a copy of Summons and Complaint on April 4, 1995; that the Defendant, LOUIS E. STRIEGEL, acknowledged receipt of Summons and Complaint on March 31, 1995, by Certified Mail.

The Court further finds that the Defendants, DONNA STRIEGEL aka Donna G. M. Striegel aka Donna M. Striegel, UNKNOWN SPOUSE OF Donna Striegel aka Donna G. M. Striegel aka Donna M. Striegel, if any, and CENTURY XXI EAST, INC., were served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning May 10, 1995, and continuing through June 14, 1995, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, DONNA STRIEGEL aka Donna G. M. Striegel aka Donna M. Striegel, UNKNOWN SPOUSE OF Donna Striegel aka Donna G. M. Striegel aka Donna M. Striegel, if any, and CENTURY XXI EAST, INC., and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the

Defendants, DONNA STRIEGEL aka Donna G. M. Striegel aka Donna M. Striegel, UNKNOWN SPOUSE OF Donna Striegel aka Donna G. M. Striegel aka Donna M. Striegel, if any, and CENTURY XXI EAST, INC. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Secretary of Housing and Urban Development, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answer on February 21, 1995; that the Defendant, MARGARET S. STRIEGEL, filed her Disclaimer on April 4, 1995; and that the Defendants, JAMES W. STRIEGEL aka James N. Striegel, UNKNOWN SPOUSE OF James W. Striegel aka James N. Striegel who the same person as CATHY STRIEGEL, DONNA STRIEGEL aka Donna G. M. Striegel aka Donna M. Striegel, UNKNOWN SPOUSE OF Donna Striegel aka Donna G. M. Striegel aka Donna M. Striegel, if any, CENTURY XXI EAST, INC., and LOUISE E. STRIEGEL, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, JAMES W. STRIEGEL, is one and the same person as James N. Striegel, and will hereinafter be referred to as "JAMES W.

— STRIEGEL." The Defendant, DONNA STRIEGEL, is one and the same person as Donna G. M. Striegel and Donna M. Striegel, and will hereinafter be referred to as "DONNA STRIEGEL." The Defendant, JAMES W. STRIEGEL and DONNA STRIEGEL, were granted a Divorce in Tulsa County District Court, Case No. FD-87-215, filed on October 26, 1988. The Defendant, UNKNOWN SPOUSE OF James W. Striegel aka James N. Striegel, is one and the same person as CATHY STRIEGEL, and will hereinafter be referred to as "CATHY STRIEGEL." The Defendants, JAMES W. STRIEGEL and CATHY STRIEGEL are husband and wife.

The Court further finds that the defendants, LOUISE E. STRIEGEL and MARGARET S. STRIEGEL, are no longer husband and wife.

— The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

**Lot Four (4), Block One (1), CENTURY 21 EAST to the
City of Tulsa, County of Tulsa, State of Oklahoma,
according to the Recorded Plat thereof.**

The Court further finds that on May 30, 1978, Laurence J. Yadon, II, executed and delivered to FIRST CONTINENTAL MORTGAGE CO., a mortgage note in the amount of \$30,500.00, payable in monthly installments, with interest thereon at the rate of Nine percent (9%) per annum.

— The Court further finds that as security for the payment of the above-described note, Laurence J. Yadon, II, a single person, executed and delivered to FIRST CONTINENTAL MORTGAGE CO., a mortgage dated May 30, 1978, covering the above-

described property. Said mortgage was recorded on June 1, 1978, in Book 4331, Page 2104, in the records of Tulsa County, Oklahoma.

The Court further finds that on February 10, 1987, Commonwealth Savings Association as Successor by Merger to First Continental Mortgage Co., assigned the above-described mortgage note and mortgage to Commonwealth Mortgage Company of America, L.P. This Assignment of Mortgage was recorded on June 12, 1987, in Book 5030, Page 222, in the records of Tulsa County, Oklahoma.

The Court further finds that on January 10, 1990, Commonwealth Mortgage Company of America, L.P., assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on March 26, 1990, in Book 5243, Page 1055, in the records of Tulsa County, Oklahoma.

The Court further finds that Laurence J. Yadon, II, a single person, conveyed title to the subject real property to the Defendant, LOUISE E. STRIEGEL, by virtue of a General Warranty Deed, dated March 24, 1980, recorded on March 24, 1980, in Book 4465, Page 2131, in the records of Tulsa County, Oklahoma. Thereafter, the Defendant, LOUISE E. STRIEGEL, joined by his then wife, MARGARET S. STRIEGEL conveyed the subject real property to the Defendants, JAMES W. STRIEGEL and DONNA STRIEGEL, then Husband and Wife, by virtue of a General Warranty Deed, dated April 13, 1983, recorded on April 15, 1983, in Book 4684, Page 568, in the records of Tulsa County, Oklahoma. Said Defendants, JAMES W. STRIEGEL and DONNA STRIEGEL, are the current assumptors of the Note and Mortgage which secure the subject property.

The Court further finds that on December 27, 1989, the Defendant, JAMES W. STRIEGEL, entered into an agreement with the Plaintiff lowering the amount of

the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. A superseding agreement was reached between these same parties on September 12, 1991.

The Court further finds that the Defendants, JAMES W. STRIEGEL and DONNA STRIEGEL, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, JAMES W. STRIEGEL and DONNA STRIEGEL, are indebted to the Plaintiff in the principal sum of \$40,710.63, plus interest at the rate of 9.0 percent per annum from November 1, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendants, JAMES W. STRIEGEL, CATHY STRIEGEL, DONNA STRIEGEL, UNKNOWN SPOUSE OF Donna Striegel aka Donna G. M. Striegel aka Donna M. Striegel, if any, CENTURY XXI EAST, INC., and LOUISE E. STRIEGEL, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendants, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that the Defendant, MARGARET S. STRIEGEL, disclaims any right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment In Rem against the Defendants, JAMES W. STRIEGEL and DONNA STRIEGEL, in the principal sum of \$40,710.63, plus interest at the rate of 9.0 percent per annum from November 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5.70 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, MARGARET S. STRIEGEL, JAMES W. STRIEGEL, CATHY STRIEGEL, DONNA STRIEGEL, UNKNOWN SPOUSE OF Donna Striegel aka Donna G. M. Striegel aka Donna M. Striegel, if any, CENTURY XXI EAST, INC., and LOUISE E. STRIEGEL, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, JAMES W. STRIEGEL and DONNA STRIEGEL, to satisfy the judgment In Rem of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

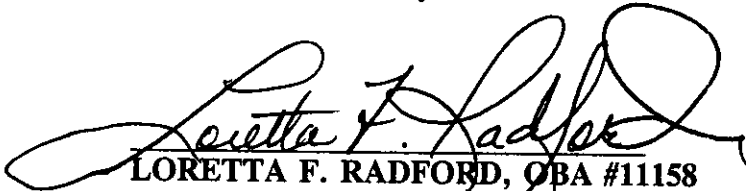
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney
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Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 95-C 0110B

LFR:flv

NOTE: THE INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 10-10-2001 BY 60322 UCBAW/STP

their Answers on May 11, 1995; that the Defendant, SERVICE COLLECTION ASSOCIATION, INC., filed its Answer on May 3, 1995; and that the Defendant, SANDRA P. FLEETWOOD, has failed to answer and her default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, SANDRA P. FLEETWOOD, is a single unmarried person.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Eight (8), Block Nine (9), RIVERVIEW PARK SECOND ADDITION, Blocks 5 through 12, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on September 1, 1978, the Defendant, SANDRA P. FLEETWOOD, executed and delivered to MIDLAND MORTGAGE CO., her mortgage note in the amount of \$32,450.00, payable in monthly installments, with interest thereon at the rate of Nine and One-Half percent (9.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, SANDRA P. FLEETWOOD, executed and delivered to MIDLAND MORTGAGE CO., a mortgage dated September 1, 1978, covering the above-described property. Said mortgage was recorded on September 8, 1978, in Book 4352, Page 517, in the records of Tulsa County, Oklahoma.

The Court further finds that on October 31, 1989, Midland Mortgage Co., assigned the above-described mortgage note and mortgage to the Secretary of Housing and

Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on December 15, 1989, in Book 5225, Page 1833, in the records of Tulsa County, Oklahoma.

The Court further finds that on November 11, 1989, the Defendant, SANDRA P. FLEETWOOD, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on November 1, 1990, November 1, 1991, December 1, 1991, and October 1, 1992.

The Court further finds that the Defendant, SANDRA P. FLEETWOOD, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, SANDRA P. FLEETWOOD, is indebted to the Plaintiff in the principal sum of \$45,371.68, plus interest at the rate of 9.5 percent per annum from April 1, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$16.00 which became a lien on the property as of July 7, 1988, a lien in the amount of \$15.00 which became a lien on the property as of July 5, 1989, a lien in the amount of \$13.00 which became a lien on the property as of July 2, 1990, a lien in the amount of \$44.00 which became a lien on the property as of June 26, 1992, a lien in the amount of \$31.00 which became a lien on the

property as of June 25, 1993, and a lien in the amount of \$32.00 which became a lien on the property as of June 23, 1994. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, SERVICE COLLECTION ASSOCIATION, INC., has a lien on the property which is the subject matter of this action by virtue of a judgment in the amount of \$5,746.50, representing \$4,388.50 Principal Amount, \$1,277.00 Attorney Fees, \$81.00 Costs, and interest at a rate of 11.710 percent, which became a lien on the property as of April 30, 1991. Said lien is inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, SANDRA P. FLEETWOOD, is in default, and has no right, title or interest in the subject real property.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendant, SANDRA P. FLEETWOOD, in the principal sum of \$45,371.68, plus interest at the rate of 9.5 percent per annum from April 1, 1995 until judgment, plus interest thereafter at the current legal rate of 5.70 percent per annum until paid, plus the costs of this action, plus any additional

sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$151.00, plus costs and interest, for personal property taxes for the years 1987-1989 and 1991-1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, SERVICE COLLECTION ASSOCIATION, INC., have and recover judgment in the amount of \$5,746.50, representing \$4,388.50 Principal Amount, \$1,277.00 Attorney Fees, \$81.00 Costs, and interest at a rate of 11.710 percent, plus the cost of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, and SANDRA P. FLEETWOOD, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, SANDRA P. FLEETWOOD, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the
Plaintiff;

Third:

In payment of Defendant, COUNTY TREASURER, Tulsa
County, Oklahoma, in the amount of \$44.00, personal property
taxes which are currently due and owing.

Fourth:

In payment of Defendant, SERVICE COLLECTION
ASSOCIATION, INC., in the amount of \$5,746.50,
representing \$4,388.50 Principal Amount, \$1,277.00 Attorney
Fees, \$81.00 Costs, and interest at a rate of 11.710 percent, for
its judgment, plus the cost of this action.

Fifth:

In payment of Defendant, COUNTY TREASURER, Tulsa
County, Oklahoma, in the amount of \$107.00, personal property
taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await
further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant
to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any
right to possession based upon any right of redemption) in the mortgagor or any other person
subsequent to the foreclosure sale.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

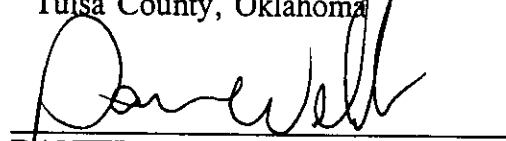
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County Treasurer and
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Service Collection Association, Inc

Judgment of Foreclosure
Civil Action No. 95 C 365B

LFR:flv

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ANNIE LEE RUSHING; UNKNOWN
SPOUSE IF ANY OF ANNIE LEE
RUSHING; CROSSLANDS FEDERAL
SAVINGS BANK; COUNTY
TREASURER, Tulsa County, Oklahoma;
BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

JUL 26 1995

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE JUL 26 1995

Civil Case No. 95-C 88B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 25 day of July, 1995. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, **County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma**, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; the Defendant, **Unknown spouse, if any of Annie Lee Rushing**, should be dismissed; and the Defendants, **Annie Lee Rushing and Crosslands Federal Savings Bank**, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, **Annie Lee Rushing**, was served with process on March 24, 1995; and that the Defendant, **Crosslands Federal Savings Bank**, acknowledged receipt of Summons and Complaint on February 1, 1995 via certified mail.

RECEIVED
JUL 26 1995
UPON RECEIPT.

It appears that the Defendants, **County Treasurer, Tulsa County, Oklahoma,** and **Board of County Commissioners, Tulsa County, Oklahoma,** filed their Answer on February 9, 1995; and that the Defendants, **Annie Lee Rushing and Crosslands Federal Savings Bank,** have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on July 9, 1995, the Defendant, **Annie Lee Rushing,** signed an Affidavit stating that she is an unmarried person, which was filed on July 12, 1995. Based upon this Affidavit, the Defendant, **Unknown spouse if any of Annie Lee Rushing,** should be dismissed.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Thirty-two (32), Block Thirty-eight (38), VALLEY VIEW ACRES SECOND ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on August 17, 1984, the Defendant, **Annie Lee Rushing,** executed and delivered to Mercury Mortgage Co., Inc. her mortgage note in the amount of \$39,963.00, payable in monthly installments, with interest thereon at the rate of thirteen and one-half percent (13.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, **Annie Lee Rushing,** a single person, executed and delivered to Mercury Mortgage Co., Inc. a mortgage dated August 17, 1984, covering the above-

described property. Said mortgage was recorded on August 29, 1984, in Book 4813, Page 2269, in the records of Tulsa County, Oklahoma.

The Court further finds that on April 29, 1986, Mercury Mortgage Co., Inc. assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on April 29, 1986, in Book 4938, Page 1983, in the records of Tulsa County, Oklahoma.

The Court further finds that on April 14, 1987, the Defendant, Annie Lee Rushing, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. A superseding agreement was reached between these same parties on September 8, 1988 and May 6, 1991.

The Court further finds that on July 14, 1994, the Defendant, Annie Lee Rushing, filed her petition for Chapter 7 relief in the United States Bankruptcy Court for the Northern District of Oklahoma, Case Number 94-02032-W, which was discharged on November 18, 1994, and was closed on December 28, 1994.

The Court further finds that the Defendant, Annie Lee Rushing, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, **Annie Lee Rushing**, is indebted to the Plaintiff in the principal sum of \$74,547.66, plus interest at the rate of 13.5 percent per annum from October 1, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, **County Treasurer, Tulsa County, Oklahoma**, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$3.00 which became a lien on the property as of June 25, 1993; and a lien in the amount of \$3.00 which became a lien as of June 23, 1994. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, **Board of County Commissioners, Tulsa County, Oklahoma**, claims no right, title or interest in the subject real property

The Court further finds that the Defendants, **Annie Lee Rushing and Crosslands Federal Savings Bank**, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendant, **Unknown spouse if any of Annie Lee Rushing**, should be dismissed from this action.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment in rem against the Defendant, **Annie Lee Rushing**, in the principal sum of \$74,547.66, plus interest at the rate of 13.5 percent per annum from October 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5.70 percent per annum until paid, plus the costs of this action, plus any additional

sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **County Treasurer, Tulsa County, Oklahoma**, have and recover judgment in the amount of \$6.00 for personal property taxes for the years 1992 and 1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, **Unknown spouse if any of Annie Lee Rushing**, is dismissed from this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, **Annie Lee Rushing, Crosslands Federal Savings Bank and Board of County Commissioners, Tulsa County, Oklahoma**, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, **Annie Lee Rushing**, to satisfy the in rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$6.00, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

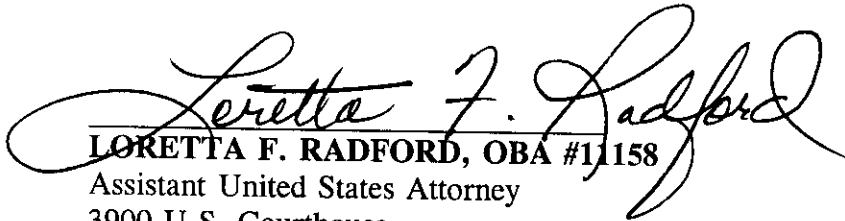
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney


LORETTA F. RADFORD, OBA #11158
Assistant United States Attorney
3900 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


DICK A. BLAKELEY, OBA #852
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4841
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 95-C 88B

LFR:lg

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 7 1995

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

PUBLIC SERVICE COMPANY OF)
OKLAHOMA, an Oklahoma)
corporation,)

Plaintiff,)

vs.)

Case No. 95-C-197-K

HNTB, Inc., a Delaware)
corporation, and JENSEN)
CONSTRUCTION COMPANY, an Iowa)
corporation,)

Defendants.)

ENTERED ON DOCKET

DATE JUL 26 1995

ORDER OF DISMISSAL WITH PREJUDICE

Plaintiff, Public Service Company of Oklahoma, and Defendants, HNTB Corporation, a Delaware corporation and Jensen Construction Company, have submitted their Joint Application and Stipulation for Dismissal With Prejudice, and the Court finds that for good cause shown, the Joint Application should be and is hereby approved. This action is therefore dismissed with prejudice, each party to bear its own costs.

SO ORDERED this 26 day of July, 1995.

s/ TERRY C. KERN

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DEBORAH JANE FINNEY; UNKNOWN
SPOUSE OF Deborah Jane Finney, if any;
LLOYD MARK FINNEY; UNKNOWN
SPOUSE OF Lloyd Mark Finney, if any;
COUNTY TREASURER, Tulsa County,
Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

ENTERED ON DOCKET
DATE JUL 26 1995
FILED

JUL 26 1995

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Civil Case No. 95-C-0020-K

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 26 day of July,
1995. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern
District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the
Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY
COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant
District Attorney, Tulsa County, Oklahoma; and the Defendants, DEBORAH JANE
FINNEY, UNKNOWN SPOUSE OF Deborah Jane Finney who is the same person as Alan
Sugwerger, LLOYD MARK FINNEY, and UNKNOWN SPOUSE OF Lloyd Mark Finney,
if any, appear not, but make default.

The Court being fully advised and having examined the court file finds that the
Defendants, DEBORAH JANE FINNEY and UNKNOWN SPOUSE OF Deborah Jane
Finney who is the same person as Alan Sugwerger, acknowledged receipt of Summons and
Complaint on February 22, 1995, through there Attorney, Thomas J.B. Hurst.

NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

The Court further finds that the Defendants, LLOYD MARK FINNEY and UNKNOWN SPOUSE OF Lloyd Mark Finney, if any, were served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning May 9, 1995, and continuing through June 13, 1995, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, LLOYD MARK FINNEY and UNKNOWN SPOUSE OF Lloyd Mark Finney, if any, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, LLOYD MARK FINNEY and UNKNOWN SPOUSE OF Lloyd Mark Finney, if any. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Department of Housing and Urban Development, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to

confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on January 19, 1995; and that the Defendants, DEBORAH JANE FINNEY, UNKNOWN SPOUSE OF Deborah Jane Finney who is the same person as Alan Sugwerger, LLOYD MARK FINNEY, and UNKNOWN SPOUSE OF Lloyd Mark Finney, if any, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendants, DEBORAH JANE FINNEY and LLOYD MARK FINNEY, were divorced in Tulsa County, Oklahoma, Case No. FD-88-00655, filed in District Court, Tulsa County, Oklahoma, on March 7, 1989. The Defendant, UNKNOWN SPOUSE OF Deborah Jane Finney, is one and the same person as Alan Sugwerger, and will hereinafter be referred to as "ALAN SUGWERGER."

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

**Lot Eleven (11), Block Two (2), SUNWOOD HILLS
SECOND, an Addition to the City of Tulsa, Tulsa County,
State of Oklahoma, according to the Recorded Plat thereof.**

The Court further finds that on August 3, 1979, the Defendants, LLOYD MARK FINNEY and DEBORAH JANE FINNEY, executed and delivered to FIRST CONTINENTAL MORTGAGE CO., A CORPORATION, their mortgage note in the amount of \$49,800.00, payable in monthly installments, with interest thereon at the rate of ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, LLOYD MARK FINNEY and DEBORAH JANE FINNEY, then Husband and Wife, executed and delivered to FIRST CONTINENTAL MORTGAGE CO., A CORPORATION, a mortgage dated August 3, 1979, covering the above-described property. Said mortgage was recorded on August 13, 1979, in Book 4419, Page 3233, in the records of Tulsa County, Oklahoma.

The Court further finds that on May 8, 1987, COMMONWEALTH SAVINGS ASSOCIATION successor by merger to FIRST CONTINENTAL MORTGAGE CO., assigned the above-described mortgage note and mortgage to COMMONWEALTH MORTGAGE COMPANY OF AMERICA, L.P. This Assignment of Mortgage was recorded on June 29, 1987, in Book 5035, Page 569, in the records of Tulsa County, Oklahoma.

The Court further finds that on July 11, 1989, COMMONWEALTH MORTGAGE COMPANY OF AMERICA, L.P., LIMITED PARTNERSHIP, assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on October 11, 1989, in Book 5213, Page 708, in the records of Tulsa County, Oklahoma.

The Court further finds that on June 14, 1989, the Defendant, DEBORAH JANE FINNEY, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. A superseding agreement was reached between these same parties on December 12, 1989 and July 11, 1990.

The Court further finds that the Defendants, DEBORAH JANE FINNEY and LLOYD MARK FINNEY, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, LLOYD MARK FINNEY and DEBORAH JANE FINNEY, are indebted to the Plaintiff in the principal sum of \$76,446.72, plus interest at the rate of 10 percent per annum from October 1, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$850.00, plus penalties and interest, for the year of 1994. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$17.00 which became a lien on the property as of July 5, 1989, a lien in the amount of \$53.00 which became a lien on the property as of June 26, 1992, a lien in the amount of \$44.00 which became a lien on the property as of June 25, 1993, and a lien in the amount of \$50.00 which became a lien on the property as of June 23, 1994. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, DEBORAH JANE FINNEY, ALAN SUGWERGER, LLOYD MARK FINNEY, and UNKNOWN SPOUSE OF Lloyd

Mark Finney, if any, are in Default, and have no right, title or interest in the subject property.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment In Rem against the Defendants, LLOYD MARK FINNEY and DEBORAH JANE FINNEY, in the principal sum of \$76,446.72, plus interest at the rate of 10 percent per annum from October 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5.70 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$850.00, plus penalties and interest, for ad valorem taxes for the year 1994, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment

in the amount of \$164.00, plus costs and interest, for personal property taxes for the years 1989 and 1991-1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, DEBORAH JANE FINNEY, ALAN SUGWERGER, LLOYD MARK FINNEY, and UNKNOWN SPOUSE OF Lloyd Mark Finney, if any, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, LLOYD MARK FINNEY and DEBORAH JANE FINNEY, to satisfy the judgment In Rem of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$850.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the
Plaintiff;

Fourth:

In payment of Defendant, COUNTY TREASURER, Tulsa
County, Oklahoma, in the amount of \$164.00, personal property
taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await
further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant
to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any
right to possession based upon any right of redemption) in the mortgagor or any other person
subsequent to the foreclosure sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under and by virtue of this judgment
and decree, all of the Defendants and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim
in or to the subject real property or any part thereof.

s/ TERRY C. KERN

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney
3460 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



DICK A. BLAKELEY, OBA #852

Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4842
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 95-C 0020K

LFR:flv

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE JUL 26 1995

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FLOYD E. BROWN; BETTY J.
BROWN; A/C FINANCIAL SERVICES,
INC; COUNTY TREASURER, Tulsa
County, Oklahoma; BOARD OF
COUNTY COMMISSIONERS, Tulsa
County, Oklahoma,

Defendants.

F I L E D

JUL 26 1995

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

) Civil Case No. 95 C 342K

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 26 day of July,
1995. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern
District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the
Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY
COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant
District Attorney, Tulsa County, Oklahoma; and the Defendants, FLOYD E. BROWN,
BETTY J. BROWN, AND A/C FINANCIAL SERVICES, INC. which is found A.I.C.
Financial Services, Inc., appear not, but make default.

The Court being fully advised and having examined the court file finds that the
Defendant, FLOYD E. BROWN, signed a Waiver of Summons on May 17, 1995; that the
Defendant, BETTY J. BROWN, signed a Waiver of Summons on May 17, 1995; that the
Defendant, A/C FINANCIAL SERVICES, INC. which is found to be A.I.C. Financial
Services, Inc., was served with process a copy of Summons and Complaint on May 26,
1995.

NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on April 28, 1995; and that the Defendants, FLOYD E. BROWN, BETTY J. BROWN and A/C FINANCIAL SERVICES, INC. which is found to be A.I.C. Financial Services, Inc., has failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendants, FLOYD E. BROWN and BETTY J. BROWN, are husband and wife.

The Court further finds that the Defendant, A/C FINANCIAL SERVICES, INC., is found to be A.I.C. FINANCIAL SERVICES, INC., and will hereinafter be referred to as A.I.C. FINANCIAL SERVICES, INC.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

**Lot Eleven (11), Block Sixty (60), VALLEY VIEW ACRES
THIRD ADDITION to the City of Tulsa, Tulsa County,
State of Oklahoma, according to the recorded Plat thereof.**

The Court further finds that on April 20, 1984, Shirley A. Belk, executed and delivered to CHARLES F. CURRY COMPANY, her mortgage note in the amount of \$35,500.00, payable in monthly installments, with interest thereon at the rate of Twelve and One-Half percent (12.5%) per annum.

The Court further finds that as security for the payment of the above-described note, Shirley A. Belk, an unmarried person, executed and delivered to CHARLES F. CURRY COMPANY, a mortgage dated April 20, 1984, covering the above-described property. Said

mortgage was recorded on April 27, 1984, in Book 4785, Page 2442, in the records of Tulsa County, Oklahoma.

The Court further finds that on May 8, 1989, CHARLES F. CURRY COMPANY, assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development his/her successors or assigns. This Assignment of Mortgage was recorded on May 15, 1989, in Book 5183, Page 1261, in the records of Tulsa County, Oklahoma.

The Court further finds that Defendants, FLOYD E. BROWN and BETTY J. BROWN, currently hold title to the property by virtue of a General Warranty Deed dated May 12, 1988, and recorded on May 13, 1988, in Book 5099, Page 1335, in the records of Tulsa County, Oklahoma; and are the current assumptors of the subject indebtedness.

The Court further finds that on July 1, 1989, the Defendants, FLOYD E. BROWN and BETTY J. BROWN, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on December 1, 1989, July 1, 1990, February 1, 1991, and January 1, 1992.

The Court further finds that the Defendants, FLOYD E. BROWN and BETTY J. BROWN, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, FLOYD E. BROWN and BETTY J. BROWN, are indebted to the Plaintiff in the principal sum of \$62,693.96, plus interest at the rate of 12.5 percent per annum from March 14, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendants, FLOYD E. BROWN, BETTY J. BROWN and A.I.C. FINANCIAL SERVICES, INC., are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendants, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment against the Defendants, FLOYD E. BROWN and BETTY J. BROWN, in the principal sum of \$62,693.96, plus interest at the rate of 12.5 percent per annum from March 14, 1995 until judgment, plus interest thereafter at the current legal rate of 5.70 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, FLOYD E. BROWN, BETTY J. BROWN and A.I.C. FINANCIAL SERVICES, INC., have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, FLOYD E. BROWN, and BETTY J. BROWN, to satisfy the

money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

s/ TERRY C. KERN

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney

3460 U.S. Courthouse

Tulsa, Oklahoma 74103

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DICK A. BLAKELEY, OBA #852

Assistant District Attorney

406 Tulsa County Courthouse

Tulsa, Oklahoma 74103

(918) 596-4842

Attorney for Defendants,

County Treasurer and

Board of County Commissioners,

Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 95 C 342K

LFR:flv

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GENEVA J. GORDON fka Geneva J.
DeShazer; BERNARD M. GORDON aka
Mike Gordon; COUNTY TREASURER,
Osage County, Oklahoma; BOARD OF
COUNTY COMMISSIONERS, Osage
County, Oklahoma,

Defendants.

ENTERED ON DOCKET

DATE JUL 26 1995

FILED

JUL 27 1995

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Civil Case No. 95 C 329K

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 26 day of July,

1995. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Osage County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, appear by John S. Boggs, Jr., Assistant District Attorney, Osage County, Oklahoma; and the Defendants, GENEVA J. GORDON fka Geneva J. DeShazer and BERNARD M. GORDON aka Mike Gordon, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, GENEVA J. GORDON fka Geneva J. DeShazer, signed a Waiver of Summons on May 16, 1995; that the Defendant, BERNARD M. GORDON aka Mike Gordon, signed a Waiver of Summons on May 16, 1995; that Defendant, COUNTY TREASURER, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on April 17, 1995, by Certified Mail; and that Defendant, BOARD OF COUNTY COMMISSIONERS, Osage

NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

County, Oklahoma, acknowledged receipt of Summons and Complaint on April 13, 1995, by Certified Mail.

It appears that the Defendants, COUNTY TREASURER, Osage County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, filed their Answer on April 24, 1995; and that the Defendants, GENEVA J. GORDON fka Geneva J. DeShazer and BERNARD M. GORDON aka Mike Gordon, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, GENEVA J. GORDON, is one and the same person formerly referred to as Geneva J. DeShazer, and will hereinafter be referred to as "GENEVA J. GORDON." The Defendant, BERNARD M. GORDON, is one and the same person as Mike Gordon, and will hereinafter be referred to as "BERNARD M. GORDON." The Defendants, GENEVA J. GORDON and BERNARD M. GORDON, are husband and wife.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Osage County, Oklahoma, within the Northern Judicial District of Oklahoma:

**Lots Thirty-Nine (39) and Forty (40), in Block One (1),
KENNEDY ADDITION to Skiatook, Osage County, State of
Oklahoma, according to the recorded Plat thereof.**

The Court further finds that on September 1, 1988, Jake D. Simms and Geneva J. Simms, executed and delivered to First Federal Savings Bank of Oklahoma, their mortgage note in the amount of \$21,527.00, payable in monthly installments, with interest thereon at the rate of ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, Jake D. Simms and Geneva J. Simms, husband and wife, executed and delivered to FIRST FEDERAL SAVINGS BANK OF OKLAHOMA, a mortgage dated September 1, 1988, covering the above-described property. Said mortgage was recorded on September 9, 1988, in Book 0741, Page 207, in the records of Osage County, Oklahoma.

The Court further finds that on June 30, 1990, FIRST FEDERAL SAVINGS BANK OF OKLAHOMA, assigned the above-described mortgage note and mortgage to TRIAD BANK, N.A., its successors and assigns. This Assignment of Mortgage was recorded on June 12, 1991, in Book 794, Page 0090, in the records of Osage County, Oklahoma.

The Court further finds that on July 2, 1991, TRIAD BANK, N.A., assigned the above-described mortgage note and mortgage to the SECRETARY OF HOUSING AND URBAN DEVELOPMENT OF WASHINGTON, D.C., HIS SUCCESSORS AND ASSIGNS. This Assignment of Mortgage was recorded on July 8, 1991, in Book 0795, Page 0229, in the records of Osage County, Oklahoma.

The Court further finds that on July 14, 1990, Jake D.C. Simms and Geneva J. Simms, husband and wife, granted a general warranty deed to Geneva J. DeShazer, a single person, now Geneva J. Gordon. This deed was recorded with the Osage County Clerk on August 6, 1990, in Book 0777 at Page 585 and the Defendant, GENEVA J. GORDON, assumed thereafter payment of the amount due pursuant to the note and mortgage described above and is the current assumpor of the subject indebtedness.

The Court further finds that on June 21, 1991, the Defendant, GENEVA J. GORDON, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to

foreclose. Superseding agreements were reached between these same parties on February 1992, and September 28, 1993.

The Court further finds that the Defendant, GENEVA J. GORDON, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, GENEVA J. GORDON, is indebted to the Plaintiff in the principal sum of \$22,304.97, plus interest at the rate of 10 percent per annum from January 1, 1995 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendants, GENEVA J. GORDON and BERNARD M. GORDON, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendants, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover In Rem judgment against the Defendant, GENEVA J. GORDON, in the principal sum of \$22,304.97, plus interest at the rate of 10 percent per annum from January 1, 1995 until judgment, plus interest thereafter at the current legal rate

of 5.70 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Osage County, Oklahoma, GENEVA J. GORDON and BERNARD M. GORDON, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, GENEVA J. GORDON, to satisfy the In Rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any

right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

s/ TERRY C. KERN

UNITED STATES DISTRICT JUDGE

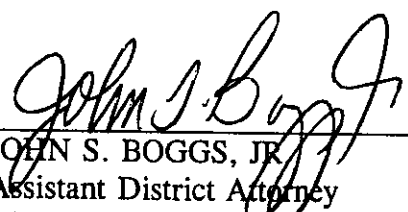
APPROVED:

STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158

Assistant United States Attorney
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JOHN S. BOGGS, JR.
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Attorney for Defendants
County Treasurer and
Board of County Commissioners
Osage County, Oklahoma

Judgment of Foreclosure
Civil Action No. 95 C 329K
LFR:flv

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE JUL 26 1995

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LINDA CAROL ROBINSON aka Linda
Warren; UNKNOWN SPOUSE OF Linda
Carol Robinson aka Linda Warren;
ROBERT LESLEY STEPHENS; LOLA
FAYE STEPHENS; CITY OF SAND
SPRINGS, Oklahoma;
COUNTY TREASURER, Tulsa County,
Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

JUL 26 1995

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Civil Case No. 95-C-0047-K

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 26 day of July, 1995. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; the Defendant, CITY OF SAND SPRINGS, Oklahoma appears not having previously filed a Disclaimer; the Defendants, ROBERT LESLEY STEPHENS and LOLA FAYE STEPHENS, appear not having previously filed a Quit-Claim Deed, and should be dismissed from this action; and the Defendants, LINDA CAROL ROBINSON aka Linda Warren and UNKNOWN SPOUSE OF Linda Carol Robinson aka Linda Warren who is the same person as Robert LeLand Warren, appear not, but make default.

**NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.**

The Court being fully advised and having examined the court file finds that the Defendant, LINDA CAROL ROBINSON aka Linda Warren, was served with process a copy of Summons and Complaint on March 9, 1995; that the Defendant.

The Court further finds that the Defendant, ROBERT LELAND WARREN, was served by publishing notice of this action in the Tulsa Daily Commerce & Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning May 9, 1995, and continuing through June 13, 1995, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, ROBERT LELAND WARREN, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, ROBERT LELAND WARREN. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting through the Department of Housing and Urban Development, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to his present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by

publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendant served by publication.

It appears that the Defendants, COUNTY TREASURER, Tulsa County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, filed their Answers on January 24, 1995; that the Defendant, CITY OF SAND SPRINGS, Oklahoma, filed its Disclaimer on January 25, 1995; and that the Defendant, LINDA CAROL ROBINSON aka Linda Warren and UNKNOWN SPOUSE OF Linda Carol Robinson aka Linda Warren who is the same person as ROBERT LELAND WARREN, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendant, LINDA CAROL ROBINSON, is one and the same person as Linda Warren, and will hereinafter be referred to as "LINDA CAROL ROBINSON." The Defendant, UNKNOWN SPOUSE OF Linda Carol Robinson aka Linda Warren, is one and the same person as Robert LeLand Warren, and will hereinafter be referred to as "ROBERT LELAND WARREN."

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Twenty-nine (29), Block Six (6), ANGUS VALLEY ACRES THIRD, an Addition to the City of Sand Springs, County of Tulsa, State of Oklahoma, according to the recorded Plat AND a part of Lot Twenty-eight (28), Block Six (6), ANGUS VALLEY ACRES THIRD an Addition to the City of Sand Springs, County of Tulsa, State of Oklahoma, according to the recorded Plat, being more particularly described as follows, to wit:

BEGINNING at the Southeast Corner of said Lot Twenty-eight (28), Block Six (6); THENCE North 22° 34' 32" West

along the common lot line of said lots Twenty-eight (28) and Twenty-nine (29), for One hundred sixty-three and Fifty-seven hundredths (163.57) feet to the Northeast Corner of said Lot Twenty-eight (28); THENCE North 89° 52' 26" West for Ten and Four tenths (10.4) feet; THENCE South 25° 51' 07" East for One hundred sixty-seven and Eighty-seven hundredths (167.87) feet to the POINT OF BEGINNING

The Court further finds that on July 1, 1987, the Defendant, LINDA CAROL ROBINSON, executed and delivered to COMMONWEALTH MORTGAGE COMPANY OF AMERICA, L.P., her mortgage note in the amount of \$43,699.00, payable in monthly installments, with interest thereon at the rate of Nine and One-Half percent (9½%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, LINDA CAROL ROBINSON, a single person, executed and delivered to COMMONWEALTH MORTGAGE COMPANY OF AMERICA L.P., a mortgage dated July 1, 1987, covering the above-described property. Said mortgage was recorded on July 2, 1987, in Book 5036, Page 1204, in the records of Tulsa County, Oklahoma.

The Court further finds that on February 23, 1988, COMMONWEALTH MORTGAGE COMPANY OF AMERICA, L.P., assigned the above-described mortgage note and mortgage to Carteret Savings Bank, FA. This Assignment of Mortgage was recorded on April 7, 1988, in Book 5092, Page 148, in the records of Tulsa County, Oklahoma.

The Court further finds that on September 7, 1989, Carteret Savings Bank, FA., assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment

of Mortgage was recorded on September 25, 1989, in Book 5209, Page 1758, in the records of Tulsa County, Oklahoma.

The Court further finds that on August 4, 1988, the Defendant, LINDA CAROL ROBINSON, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on December 20, 1989, April 11, 1991, and August 5, 1991.

The Court further finds that the Defendant, LINDA CAROL ROBINSON, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of her failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, LINDA CAROL ROBINSON, is indebted to the Plaintiff in the principal sum of \$71,134.00, plus interest at the rate of 9½ percent per annum from November 1, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$8.00 which became a lien on the property as of June 20, 1991, a lien in the amount of \$34.00 which became a lien on the property as of June 26, 1992, a lien in the amount of \$32.00 which became a lien on the property as of June 25, 1993, and a lien in the amount of \$20.00 which became a lien on the property as of June 23, 1994. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, ROBERT LESLEY STEPHENS and LOLA FAYE STEPHENS, should be dismissed from this action.

The Court further finds that the Defendants, LINDA CAROL ROBINSON and ROBERT LELAND WARREN, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendant, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that the Defendant, CITY OF SAND SPRINGS, Oklahoma, disclaims any right title or interest in the subject real property, except insofar as is the lawful holder of certain easements as shown on the duly recorded plat of.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment In Rem against the Defendant, LINDA CAROL ROBINSON, in the principal sum of \$71,134.00, plus interest at the rate of 9½ percent per annum from November 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5.70 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, have and recover judgment in the amount of \$94.00, plus costs and interest, for personal property taxes for the years 1990-1993, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, ROBERT LESLEY STEPHENS and LOLA FAYE STEPHENS, are dismissed from this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma, LINDA CAROL ROBINSON, and ROBERT LELAND WARREN, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, CITY OF SAND SPRINGS, Oklahoma, has no right, title or interest in the subject real property, except insofar as it is the lawful holder of certain easements as shown on the duly recorded plat of.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, LINDA CAROL ROBINSON, to satisfy the In Rem judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisalment the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of Defendant, COUNTY TREASURER, Tulsa County, Oklahoma, in the amount of \$94.00, personal property taxes which are currently due and owing.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

s/ TERRY C. KERN

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney



LORETTA F. RADFORD, OBA #11158

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Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 95-C-0047-K

LFR:flv

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE JUL 26 1995

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAYMOND WILSON;
TERESA A. WILSON;
COMMUNITY BUILDERS, INC.;
ROGERS COUNTY LOAN COMPANY;
COUNTY TREASURER, Rogers County,
Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Rogers County,
Oklahoma,

Defendants.

F I L E D

JUL 21 1995

Richard M. Lawton, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

Civil Case No. 95-C 193K

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 26 day of July, 1995.

The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Loretta F. Radford, Assistant United States Attorney; the Defendants, COUNTY TREASURER, Rogers County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Rogers County, Oklahoma, appear by Michele L. Schultz, Assistant District Attorney, Rogers County, Oklahoma; the Defendant, COMMUNITY BUILDERS, INC., appears by its Attorney, E. Mark Barcus; and the Defendants, RAYMOND WILSON, TERESA A. WILSON, and ROGERS COUNTY LOAN COMPANY, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, RAYMOND WILSON, was served with process a copy of Summons and Complaint on May 4, 1995; that the Defendant, TERESA A. WILSON, was served with

NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

process a copy of Summons and Complaint on May 4, 1995; that the Defendant, COMMUNITY BUILDERS, INC., was served with process a copy of Summons and Complaint on May 4, 1995; that Defendant, ROGERS COUNTY LOAN COMPANY, signed a Waiver of Summons and Complaint on March 2, 1995; that Defendant, COUNTY TREASURER, Rogers County, Oklahoma, was served a copy of Summons and Complaint on March 2, 1995, by Certified Mail; and that Defendant, BOARD OF COUNTY COMMISSIONERS, Rogers County, Oklahoma, was served a copy of Summons and Complaint on March 2, 1995, by Certified Mail.

It appears that the Defendants, COUNTY TREASURER, Rogers County, Oklahoma, and BOARD OF COUNTY COMMISSIONERS, Rogers County, Oklahoma, filed their Answer on March 6, 1995; that the Defendant, COMMUNITY BUILDERS, INC., filed its Answer on June 8, 1995; and that the Defendants, RAYMOND WILSON, TERESA A. WILSON, and ROGERS COUNTY LOAN COMPANY, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that the Defendants, RAYMOND WILSON and TERESA A. WILSON, are husband and wife.

The Court further finds that on July 13, 1990, Raymond Wilson and Teresa A. Wilson, filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 90-01947-W. On November 6, 1990, the United States Bankruptcy Court for the Northern District of Oklahoma filed its Discharge of Debtor and on January 9, 1991 the case was subsequently closed. On January 7, 1993, Raymond Wilson and Teresa A. Wilson, filed their voluntary petition in bankruptcy in Chapter 13 in the United States Bankruptcy Court for the Northern District of Oklahoma, Case No. 93-00055-C. The case was dismissed and closed on January 7, 1994.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Rogers County, Oklahoma, within the Northern Judicial District of Oklahoma:

All of Block 174 of the City of Claremore, Rogers County, Oklahoma, according to the U.S. Government Plat thereof.

The Court further finds that on September 30, 1987, the Defendants, RAYMOND WILSON and TERESA A. WILSON, executed and delivered to MIDFIRST MORTGAGE CO., their mortgage note in the amount of \$35,240.00, payable in monthly installments, with interest thereon at the rate of 8.625 percent per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, RAYMOND WILSON and TERESA A. WILSON, husband and wife, executed and delivered to MIDFIRST MORTGAGE CO., a mortgage dated September 30, 1987, covering the above-described property. Said mortgage was recorded on October 6, 1987, in Book 770, Page 181, in the records of Rogers County, Oklahoma.

The Court further finds that on September 30, 1987, MIDFIRST MORTGAGE CO., assigned the above-described mortgage note and mortgage to MIDFIRST SAVINGS AND LOAN ASSOCIATION. This Assignment of Mortgage was recorded on October 6, 1987, in Book 770, Page 187, in the records of Rogers County, Oklahoma.

The Court further finds that on September 28, 1988, Midfirst Savings and Loan Association, assigned the above-described mortgage note and mortgage to the Secretary of Housing and Urban Development of Washington, D.C., his successors and assigns. This Assignment of Mortgage was recorded on October 13, 1988, in Book 794, Page 195, in the records of Rogers County, Oklahoma.

The Court further finds that on September 13, 1988, the Defendants, RAYMOND WILSON and TERESA A. WILSON, entered into an agreement with the Plaintiff lowering the amount of the monthly installments due under the note in exchange for the Plaintiff's forbearance of its right to foreclose. Superseding agreements were reached between these same parties on September 27, 1989, April 20, 1990, January 30, 1991, July 9, 1991, June 24, 1992, and December 11, 1992.

The Court further finds that the Defendants, RAYMOND WILSON and TERESA A. WILSON, made default under the terms of the aforesaid note and mortgage, as well as the terms and conditions of the forbearance agreements, by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, RAYMOND WILSON and TERESA A. WILSON, are indebted to the Plaintiff in the principal sum of \$50,999.33, plus interest at the rate of 8.625 percent per annum from August 1, 1994 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action.

The Court further finds that the Defendant, COMMUNITY BUILDERS, INC., has a lien on the property which is the subject matter of this action by virtue of a Second Mortgage in the amount of \$10,424.05, plus interest at the rate of 17% per annum from June 9, 1995 until judgment, dated November 6, 1992, recorded on January 1, 1993, in Book 903, Pages 799-800, in the records of Rogers County, Oklahoma.

The Court further finds that the Defendants, RAYMOND WILSON, TERESA A. WILSON, and ROGERS COUNTY LOAN COMPANY, are in default, and have no right, title or interest in the subject real property.

The Court further finds that the Defendants, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Rogers County, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Housing and Urban Development, have and recover judgment In Rem against the Defendants, RAYMOND WILSON and TERESA A. WILSON, in the principal sum of \$50,999.33, plus interest at the rate of 8.625 percent per annum from August 1, 1994 until judgment, plus interest thereafter at the current legal rate of 5-10 percent per annum until paid, plus the costs of this action, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, COMMUNITY BUILDERS, INC., have and recover judgment In Rem and In Personam in the amount of \$10,424.05, plus interest at the rate of 17% percent per annum from June 9, 1995 until Judgment, plus interest thereafter at the legal rate until fully paid.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, COUNTY TREASURER and BOARD OF COUNTY COMMISSIONERS, Rogers County, Oklahoma, RAYMOND WILSON, TERESA A. WILSON, and ROGERS COUNTY LOAN COMPANY, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, RAYMOND WILSON and TERESA A. WILSON, to satisfy the judgment In Rem of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or without appraisal the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of the Defendant, COMMUNITY BUILDERS, INC., in the amount of \$10,424.05, plus interest at the rate of 17% percent per annum from June 9, 1995 until Judgment, plus interest thereafter at the legal rate until fully paid, for judgment.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to 12 U.S.C. 1710(1) there shall be no right of redemption (including in all instances any right to possession based upon any right of redemption) in the mortgagor or any other person subsequent to the foreclosure sale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

s/ TERRY C. KERN

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney




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Community Builders, Inc.,
Judgment of Foreclosure
Civil Action No. 95-C-193-K

LFR:flv

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 24 1995

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

LINDA RHODES,

Plaintiff,

v.

PRYOR FOUNDRY, INC.,

Defendant.

Case No. 94-C-1166-B

ENTERED ON DOCKET

DATE JUL 25 1995

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff and Defendant, by and through their respective attorneys, jointly stipulate that all of Plaintiffs' claims herein should be dismissed with prejudice with each side to bear its own costs and attorneys fees.

DATED this 24th day of July, 1995.

Respectfully submitted,

By: Cheryl S. Gan

Cheryl S. Gan, Esq.
John L. Harlan, Esq.
404 East Dewey Street
Suite 206
P.O. Box 1326
Sapulpa, Oklahoma 74067

ATTORNEYS FOR PLAINTIFF

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By: Judith A. Colbert

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Judith A. Colbert, OBA #13490
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Tulsa, Oklahoma 74103-3708
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ATTORNEYS FOR DEFENDANT

22

025

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA **FILED**

BARBARA BROWN,

Plaintiff,

v.

SHIRLEY S. CHATER, Commissioner of
Social Security,^{1/}

Defendant.

JUL 24 1995

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

No. 94-C-546-E

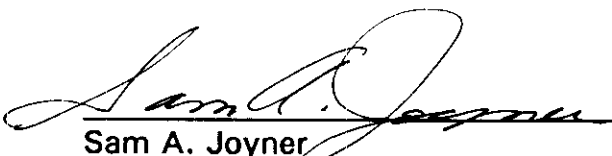
ENTERED ON DOCKET

DATE JUL 25 1995

JUDGMENT

This action has come before the Court for consideration and an Order remanding the case to the Administrative Law Judge has been entered. Judgment for the Plaintiff and against the Defendant is hereby entered pursuant to the Court's Order.

It is so ordered this 24 day of July, 1995.


Sam A. Joyner
United States Magistrate Judge

^{1/} Effective March 31, 1995, the functions of the Secretary of Health and Human Services in social security cases were transferred to the Commissioner of Social Security. P.L. No. 103-296. Pursuant to Fed. R. Civ. P. 25(d)(1), Shirley S. Chater, Commissioner of Social Security, is substituted for Donna E. Shalala, Secretary of Health and Human Services, as the Defendant in this action.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
JUL 23 1995
DATE

MICHAEL J. SWAN, Successor to)
BUCHBINDER & ELEGANT, P.A., Receiver)
of Aikendale Associates, A California)
limited partnership, ROBERT MARLIN,)
and JACK D. BURSTEIN,)

Plaintiffs,)

vs.)

SOONER FEDERAL SAVINGS AND LOAN)
ASSOCIATION, W.R. HAGSTROM,)
EDWARD L. JACOBY, DELOITTE,)
HASKINS & SELLS, PAINEWEBBER)
INCORPORATED and STEPHEN ALLEN,)

Defendants.)

FILED

JUL 24 1995

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

No. 89-C-843-E

ORDER AND JUDGMENT

On the Application of PaineWebber Incorporated ("PaineWebber") to confirm an arbitration award and for entry of judgment, the Court by previous order having found that judgment should be granted to PaineWebber, the Court hereby finds as follows:

A. That the Plaintiffs filed and prosecuted an arbitration proceeding before the New York Stock Exchange ("NYSE") of all the claims asserted against PaineWebber in this litigation;

B. That the Plaintiffs agreed in their Uniform Submission Agreement to the NYSE that they would be bound by the arbitration award and that judgment could be entered by this Court on that award;

C. That the NYSE has rendered its decision in the arbitration in which it awarded nothing to the Plaintiffs, dismissed their claims against PaineWebber, and awarded to Paine-

Webber on its counterclaim against Michael J. Swan as Receiver for Aikendale Associates, the amount of \$88,396.81, plus interest as provided by New York law from March 31, 1989;

D. That New York law allows interest at the rate of 9% per annum, thereby making the accumulated interest through June 30, 1995, in the amount of \$49,723.21.

E. That the arbitration award rendered by the NYSE as to Plaintiffs and PaineWebber was properly obtained and should be confirmed pursuant to 9 U.S.C. § 9;

F. That the claims asserted in this action and in the arbitration proceeding against PaineWebber are wholly unrelated to the claims asserted against the remaining Defendants in this action;

G. That this action has proceeded for more than two years without the participation of PaineWebber, and the Court does not anticipate that PaineWebber's participation will be needed in the future;

H. That entry of judgment on the arbitration award will permit PaineWebber to begin proceedings to collect the judgment without waiting for the unrelated claims against the remaining defendants to be adjudicated;

I. That no just reason exists for delaying entry of judgment on the confirmed arbitration award;

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:


1. The arbitration award rendered by the NYSE is hereby confirmed to the extent provided herein pursuant to 9 U.S.C. § 9.

2. Judgment is hereby entered in favor of PaineWebber and against Plaintiffs on all claims asserted by Plaintiffs against PaineWebber, pursuant to the arbitration award.

3. Judgment is hereby entered in favor of PaineWebber and against Plaintiff, Michael J. Swan as Receiver for Aikendale Associates in the amount of \$138,120.02 on PaineWebber's counterclaim against Plaintiffs, pursuant to the arbitration award.

4. Interest shall accrue on the amount stated in the preceding paragraph from July 1, 1995 through the date that this Judgment is satisfied at the rate of 9% per annum, simple, pursuant to the arbitration award.

5. This judgment is final as to all claims between Plaintiffs and PaineWebber pursuant to Federal Rule of Civil Procedure 54(b).

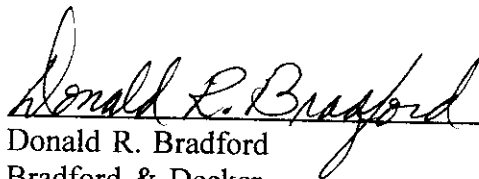

James O. Ellison, United States District Judge

APPROVED AS TO FORM:



John T. Schmidt
C. Kevin Morrison
2400 First National Tower
Tulsa, Oklahoma 74103-4391
(918) 586-5711

ATTORNEYS FOR PAINWEBBER INCORPORATED



Donald R. Bradford
Bradford & Decker
320 South Boston, Suite 1119
Tulsa, OK 74103

ATTORNEYS FOR PLAINTIFFS

FILED

JUL 21 1995

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
ONE 1992 CHEVROLET PICKUP,)
VIN 2GCEC19K3N1204360,)
)
Defendant.)

CIVIL ACTION NO. 94-C-907-B

ENTERED ON DOCKET
DATE JUL 24 1995

STIPULATION OF DISMISSAL
AND FOR RETURN OF BOND
REMAINING AFTER PLAINTIFF'S COSTS

Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, the Plaintiff, United States of America, by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Catherine Depew Hart, Assistant United States Attorney, and the Claimant, Artemio Cordova, and hereby stipulate to dismissal against the Defendant Property known as:

ONE 1992 CHEVROLET PICKUP,
VIN 2GCEC19K3N1204360,

without prejudice and without costs of the Claimant, and further stipulate that the costs of the government incurred in this action be deducted from the bond in the amount of One Thousand Nine Hundred Seventeen and 50/100 Dollars (\$1,917.50) posted by the Claimant in the administrative forfeiture, and the remainder of the cost bond, if any, be returned to the Claimant, Artemio Cordova, by mailing to his attorney, Larry D. Wagener, P. O. Box 1032, Bixby, Oklahoma 74008-1032.

15

claw

Claimant, Artemio Cordova, further stipulates and agrees to release and forever discharge any and all claims and demands which he may have against the United States of America, including, but not limited to, the United States Department of Justice, and the United States Drug Enforcement Administration (DEA), their agents and employees, on account of the arrest and seizure of the defendant vehicle.

Claimant, Artemio Cordova, further agrees that this Stipulation for Forfeiture shall forever and completely bar any action or claim in any tribunal, in any matter whatsoever, whether state, federal, or otherwise, by Claimant, Artemio Cordova, his heirs, devisees, legatees, trustees, or assigns, relating to the arrest and seizure of the defendant vehicle.

Plaintiff, the United States of America stipulates and agrees that upon execution of this Stipulation for Dismissal by the plaintiff, the claimant, and the claimants attorney, the Internal Revenue Service shall return the defendant vehicle to the claimant, and shall also return to claimant that portion of the cost bond posted by the claimant remaining after deducting the government's costs incurred in this action.

WE SO AGREE.

Respectfully submitted,

STEPHEN C. LEWIS
United States Attorney

Executed the 21st
day of July, 1995.

Phil Puel
for CATHERINE DEPEW HART, OBA #3836
Assistant United States Attorney
3460 United States Courthouse
333 West Fourth Street
Tulsa, Oklahoma 74103
(918) 581-7463

Executed the 20th
day of July, 1995.

Larry D. Wagener
LARRY D. WAGENER
Attorney at Law
13330 South Memorial, Suite 7
Bixby, Oklahoma 74008-1021
Attorney for Claimant, Artemio Cordova

Executed the 21st
day of July, 1995.

ARTEMIO CORDOVA
ARTEMIO CORDOVA

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the within and foregoing Stipulation For Dismissal was served this 21st day of July, 1995, personally upon the following individuals:

ARTEMIO CORDOVA

by serving:

LARRY D. WAGENER

Attorney at Law

13330 South Memorial, Suite 7

Bixby, Oklahoma 74008-1032


for CATHERINE DEPEW HART

N:\UDD\CHOOK\FC\CORDOBA6\04728

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUL 21 1995

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

SONYA FAIR,

Plaintiff,

v.

INTER-TRIBAL COUNCIL, INC. and
HARRY F. GILMORE,

Defendants.

Case No. 94-C-418-H

ENTERED

DATE JUL 24 1995

O R D E R

This matter comes before the Court on a motion for partial summary judgment by Defendants Inter-Tribal Council, Inc., and Harry F. Gilmore. Also before the Court is Defendant Harry F. Gilmore's alternative motion for partial summary judgment, as well as Defendant Inter-Tribal Council, Inc.'s motion for (partial) summary judgment.

Plaintiff Sonya Fair filed this action alleging that the Defendants engaged in sexual harassment in the workplace, contrary to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e. Defendant Inter-Tribal Council, Inc. (ITC) asserts that it is a tribal agency, and as such, is entitled to the sovereign immunity accorded Indian tribes under 42 U.S.C. § 2000e(b). As an employee of ITC, Gilmore claims the same immunity.

It is settled law that Indian tribes enjoy sovereign immunity from enforcement of the Civil Rights Act of 1964:

The term "employer" means a person engaged in an industry affecting commerce ...but such term does not include (1) the United States, a corporation wholly owned by the United States, an Indian Tribe...

42 U.S.C. § 2000e(b). As the Court stated in Dille v. Council of Energy Resource Tribes, 801 F.2d 373, 374 (10th Cir. 1986),

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"[c]learly this language exempts a single Indian Tribe from the definition of 'employer' and therefore from the legal requirements of Title VII."

Plaintiff asserts that because ITC is not an Indian tribe, but a corporation, it is not covered by the "Indian Tribe" exception in 42 U.S.C. § 2000e(b). Defendants respond that ITC is a "tribal agency," and as such, is covered by the "Indian Tribe" exception. The court in Dille considered a sex discrimination action filed by former female employees against their employer, a corporation comprised of 39 Indian tribes, and concluded that:

Because the council is entirely comprised of the member tribes and the decisions of the council are made by the designated representatives of those tribes, [defendant] falls directly within the scope of the Indian tribe exemption that Congress included in Title VII.

Id at 376. Thus, under Dille, tribal agencies clearly fall within the "Indian tribes" exemption created by 42 U.S.C. 2000e(b).

In the present case, Defendant ITC is a non-profit corporation with its membership restricted to Indian tribes. ITC's Board of Directors consists of representatives from each member tribe, and the Board manages the affairs of the corporation. The evidence provided in Defendants' motion supports a finding that ITC is a tribal agency and Plaintiff has offered no evidence or argument to the contrary. Therefore, the Court finds that ITC is a tribal agency, exempt from the definition of "employer" in Title VII, and immune from suit brought under the statute.

Plaintiff further contends that, assuming arguendo that ITC enjoys sovereign immunity, it waived that immunity insofar as it

— applies to Plaintiff's employment. Plaintiff's argument is based on language printed on ITC's application for employment, as well as a section from the ITC Personnel Manual. The following language appeared on her application for employment:

The Civil Rights Act of 1964 prohibits discrimination in employment because of race, color, religion, sex or national origin. Federal law also prohibits discrimination based on age and citizenship. The laws of most States also prohibit some or all of the above types of discrimination as well as some additional types such as discrimination based upon ancestry, marital status or physical or mental handicap or disability.

Plaintiff's Response to Defendants' Motion for Summary Judgment, ex. A. Similarly, Chapter III of ITC's Personnel Manual states as follows:

Sec. 3-1. Discrimination Prohibited.

— The Inter-Tribal Council shall not discriminate in its hiring and personnel procedures against any applicant for employment or any employee because of race, creed, color, national origin, sex, or age. The Indian Preference Act shall prevail where appropriate. A related prohibition against discrimination in employment is also stated as a general condition of all grants under Title II-A and III-B of the Economic Opportunity Act.

Plaintiff's Response to Defendants' Motion for Summary Judgment, ex. B. Based on this language, Plaintiff argues that Defendant has waived its immunity from suit in this action

ITC responds that the language cited by Plaintiff is clearly insufficient to constitute a waiver of its sovereign immunity, and offers Supreme Court authority in support: "[i]t is settled that a waiver of sovereign immunity 'cannot be implied but must be unequivocally expressed.'" Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58, 98 S.Ct. 1670, 1677 (1978) (citations omitted). ITC

characterizes the anti-discrimination language in the application and employee handbook as "only a restatement of the Defendants' internal, anti-discrimination policy in the hiring of its employees." Defendants' Reply to Plaintiff's Response to Defendants' Motion for Partial Summary Judgment at 3.

The Tenth Circuit has considered the waiver of sovereign immunity by an Indian tribe in a contractual context. Bank of Oklahoma v. Muscogee (Creek) Nation, 972 F.2d 1166 (10th Cir. 1992). In that case, an Indian tribe entered into a contract with a non-tribal entity. A clause in the contract provided that the tribe agreed to be subject to suit to declare rights and duties under the contract. The district court, Judge H. Dale Cook, found that the tribe's sovereign immunity divested the federal courts of subject matter jurisdiction over the action. In affirming the district court, the Tenth Circuit relied upon the Santa Clara line of cases, stating: "[t]he basic law of sovereign immunity for Indian tribes is quite clear: Suits against Indian tribes are barred by sovereign immunity absent either a clear waiver by the tribe or congressional abrogation." Bank of Oklahoma, 972 F.2d at 1169.

The Tenth Circuit declined to find a clear, unequivocally-expressed waiver in a contract clause, when the purpose of the clause was to waive a tribe's immunity from suit. The court in Bank of Oklahoma held that the contract provisions at issue did not reach the "high threshold required by Santa Clara for clear expression of the Nation's waiver of sovereign immunity." Id. at

1171. In the instant action, the Court concludes that the boilerplate language contained in Defendants' form "application for employment" and employee handbook clearly does not satisfy the high standard established by the Tenth Circuit in Bank of Oklahoma and therefore cannot be construed as a waiver of ITC's sovereign immunity under applicable law.

In the face of these authorities concerning waiver of sovereign immunity, Plaintiff responds that the above-cited language waives the statutory sovereign immunity granted by 42 U.S.C. § 2000e(b), and not the general sovereign immunity otherwise enjoyed by ITC under the law as articulated by the Supreme Court and the Tenth Circuit. Therefore, according to Plaintiff, the clear statements of the Tenth Circuit with respect to waiver as set forth above are inapplicable. This Court, however, finds no support in the law for Plaintiff's argument. Plaintiff has cited no authority, and this Court has located none, that supports a distinction between a waiver of general sovereign immunity subject to Santa Clara and Bank of Oklahoma, and a waiver of the sovereign immunity referred to in 42 U.S.C. § 2000e(b). To the contrary, the Court believes that any such purported distinction is inconsistent with the jurisprudence of sovereign immunity described in the above-cited authorities. Therefore, Plaintiff's argument lacks support in the law and must be rejected. The Court concludes that the Defendant has not waived its sovereign immunity by the language in the various documents cited by Plaintiff.

Plaintiff has also filed suit against Harry F. Gilmore, who

Plaintiff alleges was her supervisor at ITC. A lawsuit under Title VII of the Civil Rights Act of 1964, however, can only lie against Gilmore in his official capacity as an agent and employee:

Title VII actions can only be maintained against individual defendants in their official capacities, not in their individual capacities. By definition, Title VII actions are suits against the employer for unlawful employment practices.

Rolin v. Escambia County Bd. of Educ., 752 F.Supp. 1020 (S.D. Ala. 1990) (emphasis in original) (citing 42 U.S.C. § 2000e-2(a) and 42 U.S.C. § 2000e). Title VII liability may be imposed on "agents" as though they were themselves "employers." Ball v. Renner, 54 F.3d 664, 668 (10th Cir. 1995). For a court to find this form of liability, the agents must be the equivalent or near-equivalent of true employers: "persons who exercise employer-like functions vis-a-vis the employees who complain of those persons' unlawful conduct." Id.

In Renner, the evidence as to defendant Renner's employer status consisted entirely of the plaintiff's allegations that defendant Renner was the plaintiff's "direct supervisor/in charge"; that he could "send [plaintiff] home if necessary"; that he was in the "chain-of-command" above plaintiff; and that he had "supervisory authority" over plaintiff. Id., 54 F.3d at 668. The Tenth Circuit concluded that "[g]eneralized characterizations of (defendant) Renner's asserted supervisory authority... [do] nothing to demonstrate the existence of employer-like power in Renner." Id.

Upon review of the entire record in this case, the Court finds

that the only factual allegations Plaintiff has made against Gilmore are as follows:

5. Defendant Harry F. Gilmore, at all times pertinent hereto, has been an agent of and employed by Defendant, Inter-Tribal Council, Inc., as a Director with full supervisory authority over the Plaintiff.

* * *

10. Defendant, Harry F. Gilmore, acted as Plaintiff's supervisor from the time she was hired and until March 16, 1992, when Plaintiff was discharged.
11. Plaintiff's working relationship with Defendant, Harry F. Gilmore, began to deteriorate immediately upon Plaintiff's refusal of the sexual advances of Defendant, Harry F. Gilmore. Defendant's attitude then became antagonistic with him making derogatory, vulgar comments to Plaintiff as well as using abusive, threatening and intimidating language.
12. Defendant, Harry F. Gilmore, then in further retaliation against Plaintiff, falsely accused Plaintiff of carrying on an illicit relationship with a co-worker.

Complaint at 2-3.

As in Renner, nothing in the instant case suggests that Gilmore "played any role in the critical areas of hiring, firing and work assignments." Id. The only suggestion of Gilmore's supervisory authority over Plaintiff is her allegation that he "acted as Plaintiff's supervisor." Complaint at 2. Plaintiff has provided less evidence of Gilmore's supervisory role than the allegations made by the plaintiff in Renner, where the Tenth Circuit found that the evidence was inadequate to support a Title VII claim against an alleged supervisor. On this record, in accordance with Renner, 54 F.3d at 668, the Court finds that no

reasonable factfinder could conclude that Gilmore was "the equivalent of an 'employer' as that term is understood in the Title VII context, because of the absence of proof that (Gilmore) exercised supervisory/managerial authority over (Plaintiff)." Therefore, the Court finds that Defendant Gilmore is entitled to summary judgment on Plaintiff's Title VII claim.


Plaintiff's remaining claims are against Gilmore for tortious interference with contract and for intentional infliction of emotional distress. These are torts actionable under state law, brought before this Court as pendant to Plaintiff's Title VII claim. Plaintiff's only basis for subject matter jurisdiction in this Court is created by the Title VII claim. The Court has granted Defendants' motion for partial summary judgment on the Title VII claim. Since the exercise of supplemental jurisdiction was based on the presence of a federal cause of action that is no longer viable, the Court has discretion to dismiss the remaining non-federal claims. See 28 U.S.C. § 1367(c)(3). The Supreme Court has directed that in cases such as this where the sole basis for jurisdiction is the presence of a federal question and the federal claim is dismissed before trial, "the state claims should be dismissed as well." United Mineworkers of America v. Gibbs, 383 U.S. 715, 726, 86 S.Ct. 1130, 1139 (1966). Therefore, Plaintiff's remaining claims for relief based on state law are dismissed. The Court offers no opinion with respect to the merits of these claims and they are dismissed without prejudice.

It is hereby ordered that the motion for partial summary

judgment of Defendants Inter-tribal Council, Inc. and Harry F. Gilmore (docket #9) is granted. Defendant Gilmore's alternative motion for partial summary judgment (docket #19) is denied as moot. Defendant Inter-Tribal Council's motion for partial summary judgment on Plaintiff's pendent state law claims, styled as a motion for summary judgment (docket #27), is also denied as moot.

IT IS SO ORDERED.

This 21st day of July, 1995.



Sven Erik Holmes
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AMERICAN STATES INSURANCE
CO., an Indiana corporation,

Plaintiff,

v.

MICHAEL SHUE DECORTE and
CHERYL DECORTE,

Defendants.

No. 94-C-108-

FILED

JUL 21 1995

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

ENTE

ADMINISTRATIVE CLOSING ORDER

DATE JUL 24 1995

At a case management conference before Magistrate Judge Wolfe on June 8, 1994, Defendant was granted permission to defer its response to Plaintiff's Motion for Summary Judgment pending resolution of a related state court case. On May 12, 1995, Judge Sven Erik Holmes entered a minute order which asked the parties to submit a joint status report within 14 days. The Court has not received a response to its order.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within 30 days that the state court action has not been completed and further

litigation in this Court is necessary.

IT IS SO ORDERED.

This 21st day of July, 1995.

A handwritten signature in black ink, appearing to read "Sven Erik Holmes", written over a horizontal line.

Sven Erik Holmes
United States District Judge

ENTERED ON DOCKET

DATE JUL 24 1995

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

LLOYD H. ALEXANDER,

Plaintiff,

v.

SHIRLEY S. CHATER, Commissioner of
Social Security,^{1/}

Defendant.

JUL 20 1995

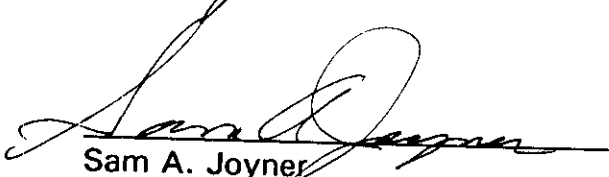
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

No. 94-C-657-K

JUDGMENT

This action has come before the Court for consideration and an Order remanding the case to the Administrative Law Judge has been entered. Judgment for the Plaintiff and against the Defendant is hereby entered pursuant to the Court's Order.

It is so ordered this 20 day of July, 1995.


Sam A. Joyner
United States Magistrate Judge

^{1/} Effective March 31, 1995, the functions of the Secretary of Health and Human Services in social security cases were transferred to the Commissioner of Social Security. P.L. No. 103-296. Pursuant to Fed.R.Civ.P. 25(d)(1), Shirley S. Chater, Commissioner of Social Security, is substituted for Donna E. Shalala, Secretary of Health and Human Services, as the Defendant in this action. Although the Commissioner has been substituted for the Secretary in the caption, the Court will continue to refer to the Secretary because she was the appropriate party at the time of the underlying decision.

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

LLOYD H. ALEXANDER,

Plaintiff,

v.

SHIRLEY S. CHATER, Commissioner of
Social Security,^{1/}

Defendant.

No. 94-C-657-K

JUL 20 1995
Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON BOOK 195
JUL 24 1995

DATE JUL 21 1995

ORDER^{2/}

Now before the Court is Plaintiff Lloyd H. Alexander's appeal of a decision by the Secretary of Health and Human Services ("the Secretary") denying him social security disability benefits. Plaintiff raises the following issue: (1) Whether the Administrative Law Judge ("ALJ") erred in determining that his impairments were not severe. For the reasons discussed below, the Secretary's decision is reversed and remanded.^{3/}

^{1/} Effective March 31, 1995, the functions of the Secretary of Health and Human Services in social security cases were transferred to the Commissioner of Social Security. P.L. No. 103-296. Pursuant to Fed.R.Civ.P. 25(d)(1), Shirley S. Chater, Commissioner of Social Security, is substituted for Donna E. Shalala, Secretary of Health and Human Services, as the Defendant in this action. Although the Court has substituted the Commissioner for the Secretary in the caption, the text of this Order will continue to refer to the Secretary because she was the appropriate party at the time of the underlying decision.

^{2/} This Order is entered in accordance with 28 U.S.C. § 636(c) and pursuant to the parties' Consent to Proceed Before U.S. Magistrate Judge, dated July 11, 1995.

^{3/} Plaintiff filed his application for benefits on February 22, 1993. The application was denied by the Secretary on May 11, 1993. [R. 67-71, 84-86]. Plaintiff's request for reconsideration was denied on June 7, 1993. [R. 87-88]. A hearing before an ALJ was held on January 5, 1994. [R. 33-66, 94-95]. Plaintiff was represented by counsel at this hearing. By an order dated January 13, 1994, the ALJ denied Plaintiff's benefit application. [R. 11-24]. The Social Security Administration Appeals Council denied Plaintiff's request for review on May 13, 1994. [R. 3-10]. Plaintiff has, therefore, exhausted his administrative remedies and he is entitled to bring this action seeking judicial review of the ALJ's decision. See, 42 U.S.C. § 405(g).

I. PLAINTIFF'S BACKGROUND

Plaintiff is a 33 year old male. He has completed high school, one year of college, and a vo-tech welding program. [R. 15, 37-38]. In the past, Plaintiff has worked as a welder, warehouse supervisor/worker, and a truck driver. [R. 39-42]. All of Plaintiff's past work was performed at the medium to heavy exertional level. [R. 57-58, 98-103]. Plaintiff claims that since March 1, 1992 he has been unable to work due to pain that runs from his neck to his legs; a bad back; a bad right shoulder that locks up; a bad right arm; a bad right index finger; difficulty thinking, remembering and sleeping; hallucinations; and blackouts or fainting spells. [R. 42-50, 104-116, 125-130].

II. SEQUENTIAL EVALUATION PROCESS

A disability under the Social Security Act is defined as the

inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment. . . .

42 U.S.C. § 423(d)(1)(A). A claimant will be deemed to be disabled

only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work in the national economy. . . .

42 U.S.C. § 423(d)(2)(A). To make a disability determination in accordance with these provisions, the Secretary has established a five-step sequential evaluation process. See, 20 C.F.R. § 404.1520; Bowen v. Yuckert, 482 U.S. 137, 140-142 (1987); and Williams v. Bowen, 844 F.2d 748, 750-53 (10th Cir. 1988) (describing

the five-step process in detail).

Under step one, the claimant must establish that he is not engaged in substantial gainful activity as defined at 20 C.F.R. §§ 404.1510 and 404.1572. Step two requires the claimant to demonstrate that he has a medically severe impairment or combination of impairments that significantly limit his ability to do basic work activities. See, 20 C.F.R. § 1521. If claimant's impairment is not medically severe, disability benefits are denied. Pursuant to step three, claimant's impairment is compared with those impairments listed at 20 C.F.R. Pt. 404, Subpart P, App. 1 (i.e., the Listings). If claimant's impairment is equal to or medically equivalent to an impairment in the Listings, he is presumed disabled by the Secretary and the evaluation is at an end. If not, the evaluation proceeds to step four, where the claimant must establish that his impairment or combination of impairments prevents him from performing his past relevant work. If claimant can perform his previous work, he is not disabled. If claimant is not able to perform his previous work, the Secretary must then establish at step five that the claimant, in light of his age, education, and work history, has the residual functional capacity (RFC) to perform an alternative work activity in the national economy. If claimant has the RFC to perform an alternate work activity, disability benefits are denied. See, Bowen, 482 U.S. at 140-42; Williams, 844 F.2d at 750-751.

The ALJ's evaluation of Plaintiff's claim in this case terminated at step two. The ALJ determined that Plaintiff did not have any impairment or combination of impairments that significantly limited his ability to perform basic work activities. [R.

22]. The only error Plaintiff alleges in his Brief is that the ALJ erred in making his non-severe determination because he rejected a consulting physician's findings without giving specific and legitimate reasons. [Plaintiff's Brief, p. 5-6].

III. STANDARD OF REVIEW

The Court's review of the ALJ's decision is limited to determining (1) whether the ALJ applied the correct legal principles, and (2) whether the ALJ's decision is supported by substantial evidence. 42 U.S.C. § 405(g); Bernal v. Bowen, 851 F.2d 297, 299 (10th Cir. 1988); Williams, 844 F.2d at 750. The Court will not undertake a *de novo* review of the evidence. Sisco v. U.S. Dept. of Health and Human Services, 10 F.3d 739, 741 (10th Cir. 1993). In order to make these determinations, the Court will meticulously examine the entire record. Williams, 844 F.2d at 750.

Substantial evidence is that amount and type of evidence that a reasonable mind will accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389, 401 (1971); Williams, 844 F.2d at 750. In terms of traditional burdens of proof, substantial evidence is more than a scintilla, but less than a preponderance. Perales, 402 U.S. at 401. Evidence is not substantial if it is overwhelmed by other evidence in the record. Williams, 844 F.2d at 750. While evaluating medical evidence, more weight will be given to evidence from a treating physician than will be given to evidence from a consulting physician appointed by the Secretary or a physician who merely reviews medical records without examining the claimant. Id. at 757-58; Turner v. Heckler, 754 F.2d 326, 329 (10th Cir. 1985). A treating physician's opinion may be rejected, however, "if it is brief, conclusory, and

unsupported by medical evidence." Frey v. Bowen, 816 F.2d 508, 513 (10th Cir. 1987). If the ALJ disregards a treating physician's opinion, he must set forth "specific, legitimate reasons" for doing so. Byron v. Heckler, 742 F.2d 1232, 1235 (10th Cir. 1984).

IV. REVIEW

A. The ALJ Did Not Properly Apply the Severity Regulation in This Case.

According to records from Dr. Terrill H. Simmons, Plaintiff's treating physician, Plaintiff injured his lower back on October 19, 1978 when he fell off a truck while unloading steel beams. Plaintiff consulted a doctor and was off work until December of 1978.^{4/} Plaintiff re-injured his back on January 17, 1979 while lifting a bumper at work. At this point, Plaintiff began seeing Dr. Simmons and was diagnosed with a lumbosacral strain. Plaintiff's back injury apparently resolved itself by June 6, 1979 at which time Dr. Simmons found that Plaintiff was free to return to work without limitation. [R. 175-178].

Plaintiff re-injured his back again on June 30, 1979 during a fight he had with another employee at work. Plaintiff was treated conservatively by Dr. Simmons and returned to full work activity in July 1979. [R. 174-175]. In his Final Medical Report, Dr. Simmons found that Plaintiff was mildly symptomatic, but he was not permanently disabled and a full recovery was expected over time. [R. 17-174]. One month after Dr. Simmons issued his Final Medical Report, Plaintiff was still reporting pain. Dr.

^{4/} No reports from this unnamed doctor are included in the record.

Simmons issued another report essentially finding the same as he had in his final report (i.e., that Plaintiff's lumbosacral strain would resolve itself over time). Plaintiff was returned to work with no limitations. [R. 170-171].

Dr. Simmons' August 1979 report is the last report of record from a treating physician regarding Plaintiff's back problems. Since that report, Plaintiff injured his right shoulder in 1984 when a piece of steel fell from a billboard and struck him. This injury was also treated by Dr. Simmons. Plaintiff recovered from this injury with a 5% disability rating by Dr. Simmons and was returned to work without limitations. [R. 164-167]. Since Dr. Simmons' last report regarding Plaintiff's back, Plaintiff also reports being involved in a car accident in 1991. [R. 149].

The only current medical evidence in the record regarding Plaintiff's back condition is the April 26, 1993 report from Angelo Dalessandro, D.O. Dr. Dalessandro is a consulting physician retained by the Secretary to examine Plaintiff in connection with this disability claim. According to Dr. Dalessandro, Plaintiff has a "chronic lumbar strain" which is characterized by "bilateral lumbodorsal tenderness [with] limitation of the lumbodorsal movement in all directions." [R. 150-151]. Dr. Dalessandro's assessment is that "medium to heavy work related activities would be difficult for [Plaintiff] to perform." [R. 151].

As Plaintiff points out in his Brief, there is no medical evidence in the record which controverts Dr. Dalessandro's findings. Furthermore, the Secretary in her Brief finds no fault with Dr. Dalessandro's findings and argues that they were in fact accepted by the ALJ, but that the ALJ found Plaintiff's impairment to be non-severe

despite Dr. Dalessandro's findings. [Defendant's Brief, p. 4]. The ALJ's non-severe determination and the Secretary's argument are, however, inconsistent with the Secretary's own regulations.

Step two of the Sequential Evaluation Process, is governed by the Secretary's "severity regulation." Bowen, 482 U.S. at 140-41; Williams, 844 F.2d at 750-51.

The "severity regulation" provides that:

If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, [the Secretary] will find that you do not have a severe impairment and are, therefore, not disabled. [The Secretary] will not consider your age, education, and work experience.

20 C.F.R. § 404.1520(c). Pursuant to this regulation, claimant must make a "threshold showing that his medically determinable impairment or combination of impairments significantly limits his ability to do basic work activities." Williams, 844 F.2d at 751. This threshold determination is to be based on medical factors alone. Vocational factors, such as age, education, and work experience, are not to be considered. Bowen, 482 U.S. at 153; Williams, 844 F.2d at 750.

The ability to do basic work activities is defined as "the abilities and aptitudes necessary to do most jobs." 20 C.F.R. § 404.1520(b). These abilities and aptitudes include the following:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering

simple instructions;

- (4) Use of Judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine setting.

20 C.F.R. § 404.1521(b).

Plaintiff's burden on the severity issue is *de minimis*. Williams, 844 F.2d at 751. As the United States Supreme Court explains, the Secretary's severity regulation

increases the efficiency and reliability of the evaluation process by identifying at an early stage those claimants whose medical impairments are so slight that it is unlikely they would be found to be disabled even if their age, education, and experience were taken into account.

Bowen, 482 U.S. at 153 (emphasis added). The Secretary's own regulations state that

[g]reat care should be exercised in applying the not severe impairment concept. If an adjudicator is unable to determine clearly the effect of an impairment or combination of impairments on the individual's ability to do basic work activities, the sequential evaluation process should not end with the not severe evaluation step. Rather, it should be continued.

Social Security Ruling 85-28 (1985). In other words, step two "is an administrative convenience [used] to screen out claims that are 'totally groundless' solely from a medical standpoint." Higgs v. Bowen, 880 F.2d 860, 863 (6th Cir. 1988) (per curiam) (quoting Farris v. Secretary of HHS, 773 F.2d 85, 89 n. 1 (6th Cir. 1985)).

As mentioned above, the Secretary concedes that Plaintiff has "limitation of the

lumbodorsal movement in all directions" and that "medium to heavy work related activities would be difficult for [Plaintiff] to perform." [R. 150-151]. From these findings, it is clear then that Plaintiff's previous ability to lift, push or pull has been significantly impaired. That is, he can no longer work at the medium to heavy exertional level. The ALJ determined, and the Secretary now argues, that because Plaintiff can apparently still engage in work activities at a level below the medium to heavy exertional range, his impairment is not severe. Such a determination is, however, irrelevant at Step Two.

If a claimant's previous ability to do any of the work activities listed in 20 C.F.R. § 404.1521(b) has been significantly diminished, then he has a severe impairment as defined by 20 C.F.R. § 404.1520(c).

At the second step in the five-step sequence the fact that plaintiff may be able to perform lighter work than his former abilities allowed, or even that he may have the ability to do 'most jobs,' is irrelevant.

Clemente v. Schweiker, 564 F.Supp. 271, 273 (E.D.N.Y. 1983). Evaluation of a claimant's ability to perform work activities at lower exertional levels is more suited to an analysis of claimant's residual functional capacity at Step Four and/or Five of the sequential evaluation process. Thus, a finding by the ALJ that Plaintiff was still capable of performing light to sedentary work activities does not support a finding by the ALJ that Plaintiff's impairments, as determined by Dr. Dalessandro, are not severe. Id.

Mary Spreiter, a vocational expert, was present at the hearing below. She heard the Plaintiff's testimony and then testified herself. [R. 35, 55-66]. In response

to the ALJ's request that she describe Plaintiff's past work history, Ms. Spreiter described all of Plaintiff's prior work as being at the medium to heavy exertional level. [R. 57-58]. Dr. Dalessandro has determined that it would be difficult for Plaintiff to perform work activities at the medium to heavy exertional level. [R. 151]. Thus, the evidence in the record adequately supports the conclusion that Plaintiff could not perform his past relevant work. According to the Secretary's rulings, if the

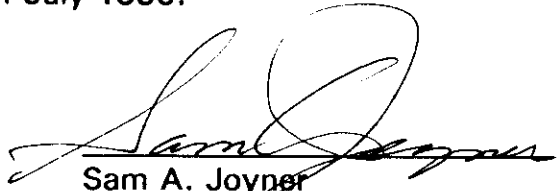
evidence shows that the person cannot perform his or her past relevant work because of the unique features of that work, a denial at the 'not severe' step of the sequential evaluation process is inappropriate. The inability to perform past relevant work in such instances warrants further evaluation of the individual's ability to do other work considering age, education and work experiences.

Social Security Ruling 85-28 (1985).^{5/} If a claimant cannot perform his past relevant work due to his current impairment, then that impairment is severe. Id. Thus, pursuant to the Secretary's own rulings, Plaintiff's impairment in this case is severe because it prevents him from performing his past relevant work.

^{5/} Social Security Rulings are binding on all Social Security Administration ("SSA") personnel, including state agency adjudicators, administrative law judges, and the Appeals Council. 20 C.F.R. 422.408. Thus, all SSA personnel are bound to apply the Secretary's severity regulation as it is interpreted in SSR 85-28.

Accordingly, this case is **REVERSED** and **REMANDED** with the direction that the ALJ proceed past Step Two of the Secretary's sequential evaluation procedure in evaluating Plaintiff's claim.

Dated this 20 day of July 1995.


Sam A. Joyner
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE JUL 24 1995

PUBLIC SERVICE COMPANY OF
OKLAHOMA, an Oklahoma
corporation,

Plaintiff,

vs.

HNTB, Inc., a Delaware
corporation, and JENSEN
CONSTRUCTION COMPANY, an Iowa
corporation,

Defendants.

Case No. 95-C-197-K

FILED

JUL 21 1995

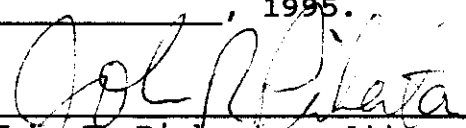
JOINT APPLICATION AND STIPULATION
FOR DISMISSAL WITH PREJUDICE

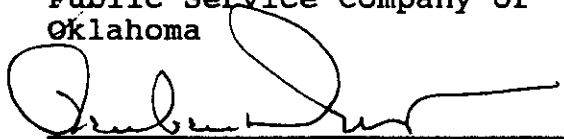
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA


Plaintiff, Public Service Company of Oklahoma, and

Defendants, HNTB Corporation, a Delaware corporation (also referred
to in the above captioned matter as HNTB, Inc.) and Jensen
Construction Company, would advise the Court that they have reached
a mutually agreeable settlement of the claims and counterclaims
presented herein, and thereby make joint application and by
stipulation request that the above styled and entitled action be
dismissed with prejudice, each party to bear its own costs.

DATED this 21st day of July, 1995.


John R. Pinkerton, Attorney for
Public Service Company of
Oklahoma


Reuben Davis, Attorney for
HNTB Corporation, a Delaware
corporation


John R. Paul, Attorney for
Jensen Construction Company

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MICHAEL EUGENE PRICE,

Plaintiff,

vs.

DAVID ISKEY, et al.,

Defendants.

No. 95-C-504-H

FILED
JUL 20 1995
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE JUL 21 1995

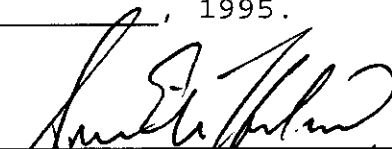
ORDER

This matter comes before the Court on Plaintiff's Motion to Dismiss his Complaint without prejudice. Because summons have not yet been issued in this case, the Court liberally construes Plaintiff's motion to dismiss as one for voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(i).

Accordingly, Plaintiff's Motion to Dismiss (docket #3) is hereby **granted** and this case is hereby **dismissed without prejudice**. The Clerk shall **mail** to Plaintiff the unused marshal forms and summons and the necessary forms and instructions for filing a new civil rights action.

IT IS SO ORDERED.

This 20TH day of July, 1995.


Sven Erik Holmes
United States District Judge

ENTERED ON DOCKET

DATE _____

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROSALIE G. CLARK, individually,
and as Surviving Spouse and Next
of Kin of LOUIS O. CLARK,
Deceased,

Plaintiff,

vs.

FIBREBOARD CORPORATION, et al.,

Defendants.

FILED

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

Case No. 92-C-62-B

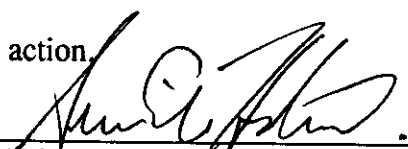
ENTERED ON DOCKET

DATE JUL 21 1995

ORDER OF DISMISSAL

The above matter coming on to be heard this 20th day of July, 1995, upon the written stipulation of plaintiff and defendant, Atlas-Turner, Inc., for a dismissal of said action with prejudice as to Atlas-Turner, Inc. only, and the Court, having examined said stipulation, finds that the parties have entered into a compromise settlement covering all claims involved in the action, and have requested the Court to dismiss said action with prejudice to any further action as to Atlas-Turner, Inc. only, and the Court, being fully advised in the premises, finds that said action should be dismissed pursuant to said stipulation.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff's claims filed herein against the defendant, Atlas-Turner, Inc., be and the same are hereby dismissed with prejudice to any future action.


THOMAS R. BRETT, U.S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 20 1995

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

GEO-GRAPHICS, Inc.,
an Oklahoma corporation,

Plaintiff,

versus

GLOBAL GRAPHICS, Inc.
an Oklahoma corporation,

and

JOHN ("ANDY") BRETZ, *et al.*,

Defendants.

Case No. 93-C-116-B

ENTERED
DATE JUL 21 1995

STAND-BY MONETARY JUDGMENT

NOW, on this 18 day of July, 1994, comes on for consideration the entry of judgment against the individual Defendant herein, JOHN ("ANDY") BRETZ (hereinafter "BRETZ"), pursuant to the Settlement Agreement reached by all the Parties herein, with the exception of Mr. Kevin Filan and Mr. Thomas Wright.

Pursuant to that Settlement Agreement, which the Court finds to be provident,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED By the Court that the Plaintiff, Geo-Graphics, Inc., shall recover monetary judgment against the Defendant BRETZ in the amount of Three Thousand Three Hundred Dollars (\$3,300.00).

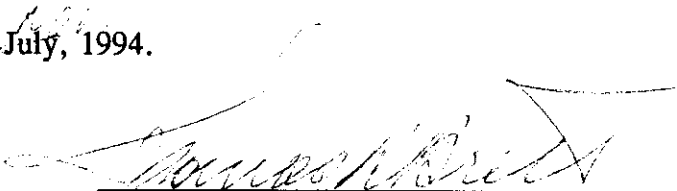
IT IS FURTHER ORDERED, ADJUDGED AND DECREED By the Court that this Monetary Judgment against BRETZ personally is not joint and several with any other judgment rendered herein (except as provided below).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED By the Court that this Monetary Judgment is "stand-by" or secondary to the Monetary Judgment heretofore rendered against the corporate Defendant herein, Global Graphics, Inc.; wherefore this Stand-By Monetary Judgment is to be used by the Plaintiff, Geo-Graphics, Inc., only in the event of a

default by Global Graphics, Inc., in or of the schedule for the payment of \$45,000.00 by the principal Defendant and judgment debtor herein, Global Graphics, Inc., as set forth in the Monetary Judgment entered herein against Global Graphics, Inc., and as the term "default" is defined therein. PROVIDED, HOWEVER, that in the event of a default by Global Graphics, Inc., then this individual Monetary Judgment against BRETZ shall entitle Geo-Graphics, Inc., to file, upon Court approval after notice and opportunity to be heard, this Monetary Judgment formally of record, and, with Court approval, to be granted only upon notice to this Defendant to be heard in opposition thereto, to commence enforcement and collection procedures for the payment of this individual Monetary Judgment; AND PROVIDED FURTHER, that upon the default by Global Graphics, Inc., this individual Monetary Judgment may be enforced concurrently, jointly and severally (up to an amount of \$3,300.00 against this individual Defendant but in no event more than the remaining balance owed by the corporate Defendant) with the Plaintiff's efforts at enforcement of any or all of the other monetary judgments awarded herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED By the Court that each Party hereto shall bear its, his, her, or their own legal costs and expenses, to include attorney's fees, for legal efforts expended through the execution and filing of this and the related Settlement papers.

IT IS SO ORDERED, this 18 day of July, 1994.



THOMAS R. BRETT
United States District Judge

APPROVED:



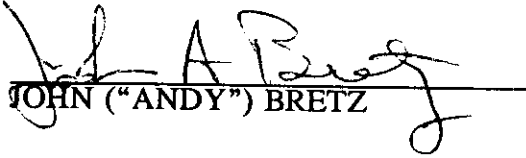
FRED P. GILBERT

Attorney for Plaintiff and Third-Party Defendants



THERESE BUTHOD

Attorney for John ("Andy") Bretz



JOHN ("ANDY") BRETZ

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GEO-GRAPHICS, Inc.,
an Oklahoma corporation,

Plaintiff,

versus

GLOBAL GRAPHICS, Inc.
an Oklahoma corporation,

and

PEGGY BASHAM, *et al.*,

Defendants.

FILED

JUL 20 1995

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

Case No. 93-C-116-B

ENTE

DOCKET

DATE JUL 21 1995

STAND-BY MONETARY JUDGMENT

NOW, on this 16 day of July, 1994, comes on for consideration the entry of judgment against the individual Defendant herein, PEGGY BASHAM (hereinafter "BASHAM"), pursuant to the Settlement Agreement reached by all the Parties herein, with the exception of Mr. Kevin Filan and Mr. Thomas Wright.

Pursuant to that Settlement Agreement, which the Court finds to be provident,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED By the Court that the Plaintiff, Geo-Graphics, Inc., shall recover monetary judgment against the Defendant BASHAM in the amount of Three Thousand Three Hundred Dollars (\$3,300.00).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED By the Court that this Monetary Judgment against BASHAM personally is not joint and several with any other judgment rendered herein (except as provided below).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED By the Court that this Monetary Judgment is "stand-by" or secondary to the Monetary Judgment heretofore rendered against the corporate Defendant herein, Global Graphics, Inc.; wherefore this Stand-By Monetary Judgment is to be used by the Plaintiff, Geo-Graphics, Inc., only in the event of a

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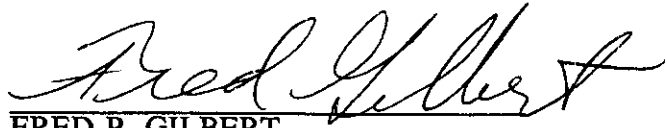
default by Global Graphics, Inc., in or of the schedule for the payment of \$45,000.00 by the principal Defendant and judgment debtor herein, Global Graphics, Inc., as set forth in the Monetary Judgment entered herein against Global Graphics, Inc., and as the term "default" is defined therein. PROVIDED, HOWEVER, that in the event of a default by Global Graphics, Inc., then this individual Monetary Judgment against BASHAM shall entitle Geo-Graphics, Inc., to file, upon Court approval after notice and opportunity to be heard, this Monetary Judgment formally of record, and, with Court approval, to be granted only upon notice to this Defendant to be heard in opposition thereto, to commence enforcement and collection procedures for the payment of this individual Monetary Judgment; AND PROVIDED FURTHER, that upon the default by Global Graphics, Inc., this individual Monetary Judgment may be enforced concurrently, jointly and severally (up to an amount of \$3,300.00 against this individual Defendant but in no event more than the remaining balance owed by the corporate Defendant) with the Plaintiff's efforts at enforcement of any or all of the other monetary judgments awarded herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED By the Court that each Party hereto shall bear its, his, her, or their own legal costs and expenses, to include attorney's fees, for legal efforts expended through the execution and filing of this and the related Settlement papers.

IT IS SO ORDERED, this 18 day of ¹⁹⁹⁴ July, 1994.

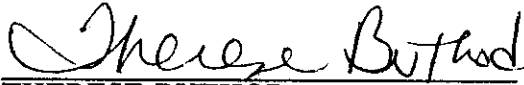

THOMAS R. BRETT
United States District Judge

APPROVED:



FRED P. GILBERT

Attorney for Plaintiff and Third-Party Defendants



THERESE BUTHOD

Attorney for Peggy Basham



PEGGY BASHAM

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GEO-GRAPHICS, Inc.,
an Oklahoma corporation,

Plaintiff,

versus

GLOBAL GRAPHICS, Inc.
an Oklahoma corporation,

and

C. HOWARD PUTNAM, *et al.*,

Defendants.

FILED

JUL 20 1995

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

Case No. 93-C-116-B

ENTL.

DATE JUL 21 1995

STAND-BY MONETARY JUDGMENT

NOW, on this 18 day of ^{Nov} July, 1994, comes on for consideration the entry of judgment against the individual Defendant herein, C. HOWARD PUTNAM (hereinafter "PUTNAM"), pursuant to the Settlement Agreement reached by all the Parties herein, with the exception of Mr. Kevin Filan and Mr. Thomas Wright.

Pursuant to that Settlement Agreement, which the Court finds to be provident,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED By the Court that the Plaintiff, Geo-Graphics, Inc., shall recover monetary judgment against the Defendant PUTNAM in the amount of Three Thousand Three Hundred Dollars (\$3,300.00).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED By the Court that this Monetary Judgment against PUTNAM personally is not joint and several with any other judgment rendered herein (except as provided below).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED By the Court that this Monetary Judgment is "stand-by" or secondary to the Monetary Judgment heretofore rendered against the corporate Defendant herein, Global Graphics, Inc.; wherefore this Stand-By Monetary Judgment is to be used by the Plaintiff, Geo-Graphics, Inc., only in the event of a

default by Global Graphics, Inc., in or of the schedule for the payment of \$45,000.00 by the principal Defendant and judgment debtor herein, Global Graphics, Inc., as set forth in the Monetary Judgment entered herein against Global Graphics, Inc., and as the term "default" is defined therein. PROVIDED, HOWEVER, that in the event of a default by Global Graphics, Inc., then this individual Monetary Judgment against PUTNAM shall entitle Geo-Graphics, Inc., to file, upon Court approval after notice and opportunity to be heard, this Monetary Judgment formally of record, and, with Court approval, to be granted only upon notice to this Defendant to be heard in opposition thereto, to commence enforcement and collection procedures for the payment of this individual Monetary Judgment; AND PROVIDED FURTHER, that upon the default by Global Graphics, Inc., this individual Monetary Judgment may be enforced concurrently, jointly and severally (up to an amount of \$3,300.00 against this individual Defendant but in no event more than the remaining balance owed by the corporate Defendant) with the Plaintiff's efforts at enforcement of any or all of the other monetary judgments awarded herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED By the Court that each Party hereto shall bear its, his, her, or their own legal costs and expenses, to include attorney's fees, for legal efforts expended through the execution and filing of this and the related Settlement papers.

IT IS SO ORDERED, this 18 day of July, 1994.


THOMAS R. BRETT
United States District Judge

APPROVED:



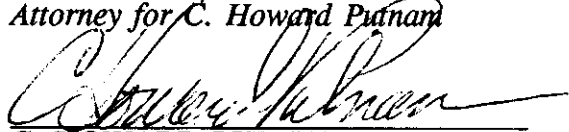
FRED P. GILBERT

Attorney for Plaintiff and Third-Party Defendants



THERESE BUTHOD

Attorney for C. Howard Putnam



C. HOWARD PUTNAM

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
JUL 20 1995

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

GEO-GRAPHICS, Inc.,
an Oklahoma corporation,

Plaintiff,

versus

GLOBAL GRAPHICS, Inc.
an Oklahoma corporation,

and

KIETH HILLIGOSS, *et al.*,

Defendants.

Case No. 93-C-116-B

ENTERED _____

DATE JUL 21 1995

STAND-BY MONETARY JUDGMENT

NOW, on this 18 day of ^{Nov} July, 1994, comes on for consideration the entry of judgment against the individual Defendant herein, KIETH HILLIGOSS (hereinafter "HILLIGOSS"), pursuant to the Settlement Agreement reached by all the Parties herein, with the exception of Mr. Kevin Filan and Mr. Thomas Wright.

Pursuant to that Settlement Agreement, which the Court finds to be provident,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED By the Court that the Plaintiff, Geo-Graphics, Inc., shall recover monetary judgment against the Defendant HILLIGOSS in the amount of Three Thousand Three Hundred Dollars (\$3,300.00).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED By the Court that this Monetary Judgment against HILLIGOSS personally is not joint and several with any other judgment rendered herein (except as provided below).


IT IS FURTHER ORDERED, ADJUDGED AND DECREED By the Court that this Monetary Judgment is "stand-by" or secondary to the Monetary Judgment heretofore rendered against the corporate Defendant herein, Global Graphics, Inc.; wherefore this Stand-By Monetary Judgment is to be used by the Plaintiff, Geo-Graphics, Inc., only in the event of a

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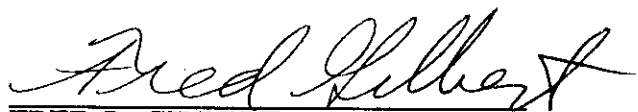
default by Global Graphics, Inc., in or of the schedule for the payment of \$45,000.00 by the principal Defendant and judgment debtor herein, Global Graphics, Inc., as set forth in the Monetary Judgment entered herein against Global Graphics, Inc., and as the term "default" is defined therein. PROVIDED, HOWEVER, that in the event of a default by Global Graphics, Inc., then this individual Monetary Judgment against HILLIGOSS shall entitle Geo-Graphics, Inc., to file, upon Court approval after notice and opportunity to be heard, this Monetary Judgment formally of record, and, with Court approval, to be granted only upon notice to this Defendant to be heard in opposition thereto, to commence enforcement and collection procedures for the payment of this individual Monetary Judgment; AND PROVIDED FURTHER, that upon the default by Global Graphics, Inc., this individual Monetary Judgment may be enforced concurrently, jointly and severally (up to an amount of \$3,300.00 against this individual Defendant but in no event more than the remaining balance owed by the corporate Defendant) with the Plaintiff's efforts at enforcement of any or all of the other monetary judgments awarded herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED By the Court that each Party hereto shall bear its, his, her, or their own legal costs and expenses, to include attorney's fees, for legal efforts expended through the execution and filing of this and the related Settlement papers.

IT IS SO ORDERED, this ^{NOV}28 day of July, 1994.


THOMAS R. BRETT
United States District Judge

APPROVED:



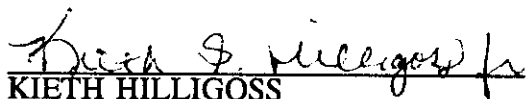
FRED P. GILBERT

Attorney for Plaintiff and Third-Party Defendants



THERESE BUTHOD

Attorney for Kieth Hilligoss



KIETH HILLIGOSS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 20 1995

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

GEO-GRAPHICS, Inc.,
an Oklahoma corporation,

Plaintiff,

versus

GLOBAL GRAPHICS, Inc.
an Oklahoma corporation,

and

BETTIE BILLINGSLEY, *et al.*,

Defendants.

Case No. 93-C-116-B

ENTERED
DATE JUL 21 1995

STAND-BY MONETARY JUDGMENT

NOW, on this 18th day of July, 1994, comes on for consideration the entry of judgment against the individual Defendant herein, BETTIE BILLINGSLEY (hereinafter "BILLINGSLEY"), pursuant to the Settlement Agreement reached by all the Parties herein, with the exception of Mr. Kevin Filan and Mr. Thomas Wright.

Pursuant to that Settlement Agreement, which the Court finds to be provident,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED By the Court that the Plaintiff, Geo-Graphics, Inc., shall recover monetary judgment against the Defendant BILLINGSLEY in the amount of Three Thousand Three Hundred Dollars (\$3,300.00).

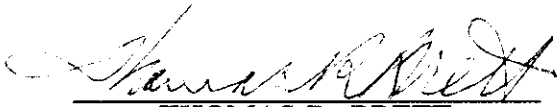
IT IS FURTHER ORDERED, ADJUDGED AND DECREED By the Court that this Monetary Judgment against BILLINGSLEY personally is not joint and several with any other judgment rendered herein (except as provided below).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED By the Court that this Monetary Judgment is "stand-by" or secondary to the Monetary Judgment heretofore rendered against the corporate Defendant herein, Global Graphics, Inc.; wherefore this Stand-By Monetary Judgment is to be used by the Plaintiff, Geo-Graphics, Inc., only in the event of a


default by Global Graphics, Inc., in or of the schedule for the payment of \$45,000.00 by the principal Defendant and judgment debtor herein, Global Graphics, Inc., as set forth in the Monetary Judgment entered herein against Global Graphics, Inc., and as the term "default" is defined therein. PROVIDED, HOWEVER, that in the event of a default by Global Graphics, Inc., then this individual Monetary Judgment against BILLINGSLEY shall entitle Geo-Graphics, Inc., to file, upon Court approval after notice and opportunity to be heard, this Monetary Judgment formally of record, and, with Court approval, to be granted only upon notice to this Defendant to be heard in opposition thereto, to commence enforcement and collection procedures for the payment of this individual Monetary Judgment; AND PROVIDED FURTHER, that upon the default by Global Graphics, Inc., this individual Monetary Judgment may be enforced concurrently, jointly and severally (up to an amount of \$3,300.00 against this individual Defendant but in no event more than the remaining balance owed by the corporate Defendant) with the Plaintiff's efforts at enforcement of any or all of the other monetary judgments awarded herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED By the Court that each Party hereto shall bear its, his, her, or their own legal costs and expenses, to include attorney's fees, for legal efforts expended through the execution and filing of this and the related Settlement papers.

IT IS SO ORDERED, this 18 day of ^{Nov}July, 1994.


THOMAS R. BRETT
United States District Judge

APPROVED:


FRED P. GILBERT
Attorney for Plaintiff and Third-Party Defendants


THERESE BUTHOD
Attorney for Bettie Billingsley


BETTIE BILLINGSLEY

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
JUL 20 1995

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

GEO-GRAPHICS, Inc.,
an Oklahoma corporation,

Plaintiff,

versus

GLOBAL GRAPHICS, Inc.
an Oklahoma corporation,

and

PATRICK CROFFORD, Jr., *et al.*,

Defendants.

Case No. 93-C-116-B ✓

ENTERED _____
DATE JUL 21 1995

STAND-BY MONETARY JUDGMENT

NOW, on this 18 day of ~~July~~ ^{Nov}, 1994, comes on for consideration the entry of judgment against the individual Defendant herein, PATRICK CROFFORD, Jr. (hereinafter "CROFFORD"), pursuant to the Settlement Agreement reached by all the Parties herein, with the exception of Mr. Kevin Filan and Mr. Thomas Wright.

Pursuant to that Settlement Agreement, which the Court finds to be provident,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED By the Court that the Plaintiff, Geo-Graphics, Inc., shall recover monetary judgment against the Defendant CROFFORD in the amount of Three Thousand Three Hundred Dollars (\$3,300.00).

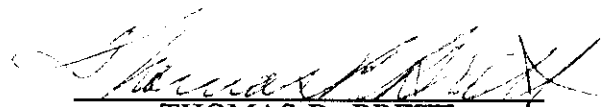
IT IS FURTHER ORDERED, ADJUDGED AND DECREED By the Court that this Monetary Judgment against CROFFORD personally is not joint and several with any other judgment rendered herein (except as provided below).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED By the Court that this Monetary Judgment is "stand-by" or secondary to the Monetary Judgment heretofore rendered against the corporate Defendant herein, Global Graphics, Inc.; wherefore this Stand-By Monetary Judgment is to be used by the Plaintiff, Geo-Graphics, Inc., only in the event of a

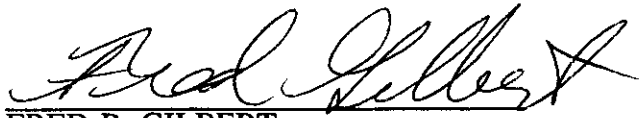
default by Global Graphics, Inc., in or of the schedule for the payment of \$45,000.00 by the principal Defendant and judgment debtor herein, Global Graphics, Inc., as set forth in the Monetary Judgment entered herein against Global Graphics, Inc., and as the term "default" is defined therein. PROVIDED, HOWEVER, that in the event of a default by Global Graphics, Inc., then this individual Monetary Judgment against CROFFORD shall entitle Geo-Graphics, Inc., to file, upon Court approval after notice and opportunity to be heard, this Monetary Judgment formally of record, and, with Court approval, to be granted only upon notice to this Defendant to be heard in opposition thereto, to commence enforcement and collection procedures for the payment of this individual Monetary Judgment; AND PROVIDED FURTHER, that upon the default by Global Graphics, Inc., this individual Monetary Judgment may be enforced concurrently, jointly and severally (up to an amount of \$3,300.00 against this individual Defendant but in no event more than the remaining balance owed by the corporate Defendant) with the Plaintiff's efforts at enforcement of any or all of the other monetary judgments awarded herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED By the Court that each Party hereto shall bear its, his, her, or their own legal costs and expenses, to include attorney's fees, for legal efforts expended through the execution and filing of this and the related Settlement papers.

IT IS SO ORDERED, this 18 day of July, 1994.


THOMAS R. BRETT
United States District Judge

APPROVED:



FRED P. GILBERT
Attorney for Plaintiff and Third-Party Defendants



THERESE BUTHOD
Attorney for Patrick Crofford, Jr.



PATRICK CROFFORD, Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 20 1995

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

Case No. 93-C-116-B

GEO-GRAPHICS, Inc.,
an Oklahoma corporation,

Plaintiff,

versus

GLOBAL GRAPHICS, Inc.
an Oklahoma corporation,

and

RICK SEITZ, *et al.*,

Defendants.

ENTERED
DATE JUL 21 1995

STAND-BY MONETARY JUDGMENT

NOW, on this 18 day of ^{July}~~July~~, 1994, comes on for consideration the entry of judgment against the individual Defendant herein, RICK SEITZ (hereinafter "SEITZ"), pursuant to the Settlement Agreement reached by all the Parties herein, with the exception of Mr. Kevin Filan and Mr. Thomas Wright.

Pursuant to that Settlement Agreement, which the Court finds to be provident,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED By the Court that the Plaintiff, Geo-Graphics, Inc., shall recover monetary judgment against the Defendant SEITZ in the amount of Three Thousand Three Hundred Dollars (\$3,300.00).


IT IS FURTHER ORDERED, ADJUDGED AND DECREED By the Court that this Monetary Judgment against SEITZ personally is not joint and several with any other judgment rendered herein (except as provided below).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED By the Court that this Monetary Judgment is "stand-by" or secondary to the Monetary Judgment heretofore rendered against the corporate Defendant herein, Global Graphics, Inc.; wherefore this Stand-By Monetary Judgment is to be used by the Plaintiff, Geo-Graphics, Inc., only in the event of a

default by Global Graphics, Inc., in or of the schedule for the payment of \$45,000.00 by the principal Defendant and judgment debtor herein, Global Graphics, Inc., as set forth in the Monetary Judgment entered herein against Global Graphics, Inc., and as the term "default" is defined therein. PROVIDED, HOWEVER, that in the event of a default by Global Graphics, Inc., then this individual Monetary Judgment against SEITZ shall entitle Geo-Graphics, Inc., to file, upon Court approval after notice and opportunity to be heard, this Monetary Judgment formally of record, and, with Court approval, to be granted only upon notice to this Defendant to be heard in opposition thereto, to commence enforcement and collection procedures for the payment of this individual Monetary Judgment; AND PROVIDED FURTHER, that upon the default by Global Graphics, Inc., this individual Monetary Judgment may be enforced concurrently, jointly and severally (up to an amount of \$3,300.00 against this individual Defendant but in no event more than the remaining balance owed by the corporate Defendant) with the Plaintiff's efforts at enforcement of any or all of the other monetary judgments awarded herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED By the Court that each Party hereto shall bear its, his, her, or their own legal costs and expenses, to include attorney's fees, for legal efforts expended through the execution and filing of this and the related Settlement papers.

IT IS SO ORDERED, this 18 day of ¹⁹⁹⁴July, 1994.


THOMAS R. BRETT
United States District Judge

APPROVED:



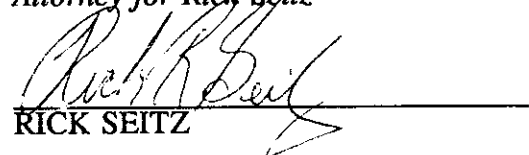
FRED P. GILBERT

Attorney for Plaintiff and Third-Party Defendants



THERESE BUTHOD

Attorney for Rick Seitz



RICK SEITZ

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CHARLES F. MOORE, TERRI L.
MOORE, and MALINDA FRANSISCO,)

Plaintiffs,)

v.)

Case No. 95-236-H ✓

MUSCOGEE (CREEK) NATION,
JUDGE PATRICK MOORE, CHARLES
TRIPP, SCOTT JOHNSON, and
REDINA MINYARD,)

ENTERED ON DOCKET

DATE JUL 21 1995

Defendants.)

MALINDA M. FRANSISCO,)

Petitioner,)

v.)

Case No. 95-395-H ✓

MUSCOGEE (CREEK) NATION,
BILL FIFE, JUDGE PATRICK
MOORE, CHARLES TRIPP, SCOTT
JOHNSON, REDINA MINYARD,
JAMES ROGERS, and MICHAEL
YEKSAVICH,)

Respondents.)

ORDER

This matter comes before the Court on a Motion for Ruling on Emergency Jurisdiction by Plaintiffs Charles F. Moore ("Charles Moore") and Terri L. Moore ("Terri Moore") in Case Number 95-236-H; a Motion to Dismiss for Lack of Jurisdiction by Defendants Muscogee (Creek) Nation ("Creek Nation"), Judge Patrick Moore ("Judge Moore"), Scott Johnson, and Redina Minyard in Case Number 95-236-H; a Motion for Ruling on Emergency Jurisdiction and Protection by Plaintiff Terri Moore in Case Number 95-236-H; and a Petition for Writ of Habeas Corpus by Petitioner Malinda M. Fransisco ("Fransisco") in Case Number 95-395-H.

FILED
JUL 20 1995
Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

Both of these lawsuits present the question of which party should maintain custody of the minor child, Travis William Lee Lackey ("Travis William Lackey"), son of Fransisco and Travis J. Lackey. Terri Moore is the child's maternal grandmother and the mother of Fransisco. Charles Moore is the husband of Terri Moore and step-father of Fransisco.

On March 14, 1995, Terri and Charles Moore, who were pro se litigants, filed a complaint containing numerous charges and requesting "Emergency Jurisdiction and Guardianship and Immediate Custody of Minor Child and Grandson Travis William Lee Lackey".¹ This case was assigned case number 95-236-H. On May 1, 1995, Fransisco, who was also pro se, filed a petition for a writ of habeas corpus requesting an order of "Jurisdiction, Immediate Possession, Custody, and Guardianship" of her minor child, Travis William Lackey. This case was numbered 95-395-K. On May 23, 1995,

¹ Their complaint listed the following charges: Abuse of Process, Blind to Child Juvenile Federal Law Kidnapping, 1983 Civil Rights Act, Violation of Parental Rights, Violation of Grandparent Rights, Due Process of the Law, Violation of the Bill of Rights, Child Endangerment, Detained against Their Will, Contributing to the Delinquency of a Minor, Lack of Medical Attention and Neglect, Lack of Medical Attention for a High Risk Baby, Placing a Child into a Situation Where He Is Too Young to Understand, Placing a Child into a Home Where There Is Potential for Harm, Death Threats, Material Alteration of Documents, Attaint, Bad Faith, Badges of Fraud, Breach of Duty, Breach of Promise, Breach of Trust, Breach of Trust with Fraudulent Intent, Slander and Deformation [sic] of Character, Code of Professional Responsibility, Coercion, Collusion, Color of Law, Concealment, Confrontation Clause, Conspiracy, Contempt of Court, Accessory to Statutory Rape, Perjury, Overt Act, Moral Tipitude [sic], Misfeasance, Misconduct in Office, Mental Cruelty, Mental Anguish, Malpractice, Malice Aforethought, Legal Fiction, Failure of Full Faith and Credit, Frivolous Claims, Violation of Freedom of Speech, Intrinsic Fraud, Fraud in Fact, Constructive Fraud, Fraud, Forcible Detainer, Illegal Emancipation, Defraud, and Covenant.

Cecil G. Drummond entered an appearance as attorney on behalf of Plaintiffs Charles and Terri Moore in case number 95-236-H. On June 21, 1995, Defendants in case number 95-236-H moved to dismiss the complaint for lack of subject matter jurisdiction. Also, on June 21, 1995, Plaintiffs Charles and Terri Moore filed an amended complaint for a writ of habeas corpus and added Fransisco as a party Plaintiff in case number 95-236-H. On June 28, 1995, case number 95-395-K was reassigned to the Honorable Sven Erik Holmes, and the new case number became 95-395-H.

Because these actions involve common questions of law and fact, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, the Court consolidates the two actions, which consolidation should assist the parties in avoiding unnecessary costs or delay. The newly consolidated action will proceed under case number 95-236-H.

Both complaints are in the nature of petitions for a writ of habeas corpus. In the petition in former case number 95-395-H, Fransisco alleges that her son was removed from his father's custody by the "Lighthorse Police and Dan Williams" without an order or a proper hearing. She further alleges that the Muscogee (Creek) Nation, Okmulgee District, and Redina Maynard, Indian Child Welfare Coordinator, obtained custody of her son at a guardianship hearing in Tulsa County District Court before the Honorable Edward Hicks on October 28, 1994. Finally, she alleges that Charles Tripp, Assistant District Attorney for the Muscogee (Creek) Nation Okmulgee District, committed perjury at an April 10, 1995 hearing

before the Honorable Edward Hicks with regard to Fransisco's emancipation process.

In the amended complaint filed in case number 95-236-H, Plaintiffs Charles and Terri Moore and Fransisco allege that the Muscogee (Creek) Nation has "assumed the care, custody and control of the minor, Travis William Lee Lackey" on the sole basis that the minor child is 1/128 Creek Indian and that Defendants unlawfully removed the minor child from the custody of Plaintiffs on June 19, 1995 with the help of the Tulsa Police Department.

This Court lacks jurisdiction to consider Plaintiffs' request for immediate custody. A writ of habeas corpus does not extend to child custody matters. Roman-Nose v. New Mexico Dep't of Human Servs., 967 F.2d 435, 436 (10th Cir. 1992); Lehman v. Lycoming County Children's Servs. Agency, 458 U.S. 502, 516 (1982) (state court judgment involuntarily terminating parental rights cannot be collaterally attacked by way of a habeas corpus petition); see also Powell v. Powell, 793 F. Supp. 105 (M.D. Pa. 1992) (district court lacked jurisdiction to consider custody claim under habeas corpus statute); Thomas v. Beth Israel Hosp., Inc., 710 F. Supp. 935, 939 (S.D.N.Y. 1989) (Lehman bars federal habeas corpus jurisdiction over state court child custody determinations involving child abuse). Therefore, the Court rejects Plaintiffs' attempt to invoke federal habeas corpus jurisdiction.

Neither the Fransisco petition nor the amended complaint set forth claims under the Indian Child Welfare Act, Title 25 U.S.C. §§ 1901-1934 (the "Act"), which claims could give the Court federal

question subject matter jurisdiction over the matter, see 28 U.S.C.

§ 1331. The Act provides in relevant part that:

any parent . . . from whose custody [an Indian] child was removed, . . . may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 1911, 1912, and 1913 of this title.

25 U.S.C. § 1914. The Roman-Nose Court described the statute as follows:

Section 1911 grants the Indian tribe jurisdiction over Indian child custody proceedings. If the Indian child resides or is domiciled within the reservation, the Indian tribe has exclusive jurisdiction over a child custody proceeding. Id. § 1911(a). If the Indian child is not domiciled or residing within the reservation, a state court must transfer the custody proceeding to the jurisdiction of the tribe upon petition by either parent absent good cause to the contrary or unless the tribal court declines to exercise jurisdiction. Id. § 1911(b). State courts must give full faith and credit to tribal court actions in custody proceedings. Id. § 1911(d). In state court custody proceedings involving Indian children, the parent must be given notice of the action and is entitled to appointment of counsel and to examine all reports or other documents filed with the court [upon] which the state court decision may be based. Id. § 1912(a) - (c). The party seeking to terminate a parent's rights over an Indian child must satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. Id. § 1912(d). In order to terminate parental rights over an Indian child, the court must make a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent . . . is likely to result in serious emotional or physical damage to the child. Id. § 1912(f).

Roman-Nose, 967 F.2d at 437-38.

It is impossible for this Court to ascertain from the pleadings whether Plaintiffs can state a claim under the Act. Therefore, the Court hereby orders that, if Plaintiffs possess facts sufficient to state a claim under the Act, then Plaintiffs

shall file an amended complaint alleging such facts within ten (10) days from the date of the entry of this Order. See, e.g., Roman-Nose, 967 F.2d at 436-37 (pleading entitled "petition for writ of habeas corpus" construed as possible claim under the Act). If Plaintiffs fail to file an amended complaint within the allotted time, then the Court must dismiss the consolidated case for lack of subject matter jurisdiction, see Fed. R. Civ. P. 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."). Further, if Plaintiffs were to file a second amended complaint, but that second amended complaint did not allege sufficient facts to support Plaintiffs' claim, then that complaint would be subject to a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).


The Court notes that Cecil Drummond has made an appearance as Plaintiffs' attorney in this case. "Once an appearance is made through counsel, there shall be no withdrawal by counsel except by leave of court upon reasonable notice to the client and all other parties who have appeared in the case." N.D. LR 83.3(M). Further, "[e]very pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name" Fed. R. Civ. P. 11(a). Plaintiffs and their counsel are required to follow these procedures, which are necessary to avoid confusion and facilitate the efficient administration of proceedings before the Court.

In conclusion, the Court consolidates case number 95-395-H

with case number 95-236-H. The newly consolidated case number shall be 95-236-H. The Court directs Plaintiffs--if they possess facts sufficient to state a claim under the Act--to file a second amended complaint within ten (10) days from the date of the entry of this Order. Otherwise, the Court will dismiss the consolidated action for lack of subject matter jurisdiction.

IT IS SO ORDERED.

This 20TH day of July, 1995.



Sven Erik Holmes
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MINNIE P. CRAIG,

Plaintiff,

v.

OKLAHOMA EMPLOYMENT SECURITY
COMMISSION, WAYNE WINN and
DAVE MURRIE,

Defendants.

No. 94-CV-516-H

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET

DATE JUL 21 1995

ORDER OF DISMISSAL WITH PREJUDICE

Coming before the Court is the Motion of the Plaintiff to dismiss the above entitled cause of action with prejudice. After reviewing the records of this case and acknowledging that no party objects, the Court finds that the Plaintiff's Motion should be granted.

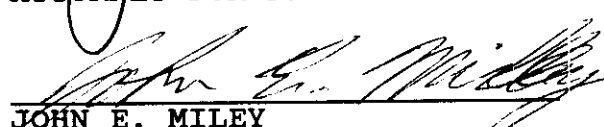
IT IS THEREFORE ORDERED that the above entitled cause of action shall be dismissed with prejudice to the filing of a future action thereon as to all Defendants.

S/ SVEN ERIK HOLMES

UNITED STATES DISTRICT COURT
JUDGE SVEN ERIK HOLMES

Approved:


JOHN B. NICKS
ATTORNEY FOR PLAINTIFF


JOHN E. MILEY
ATTORNEY FOR DEFENDANTS

FILED

JUL 20 1995

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JERRY CARROLL,

Plaintiff,

vs.

DIOCESE OF TULSA and
DAVID POOS,

Defendant.

Case No. 95-C-393-BU

ENTERED ON DOCKET

DATE JUL 21 1995

ORDER

This matter came before the Court on July 20, 1995 for case management conference. After reviewing the file, the Court, for the reasons stated at the conference, finds it lacks subject matter jurisdiction over this action.

Accordingly, pursuant to 28 U.S.C. § 1447(c), the Court hereby REMANDS this matter to the District Court for Tulsa County, State of Oklahoma. The Clerk of Court is DIRECTED to effect the remand of this matter to the state court.

ENTERED this 20th day of July, 1995.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 20 1995

JUDITH FOX,

Plaintiff,

vs.

SHIRLEY E. CHATER, Commissioner
of Social Security
Administration,¹

Defendant.

Case No. 92-C-749-BU

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA


ENTERED ON DOCKET

DATE JUL 21 1995

ORDER

In accordance with the Tenth Circuit's mandate, the Court hereby REMANDS this matter to Shirley S. Chater, Commissioner of Social Security Administration, for further medical assessment.

ENTERED this 20th day of July, 1995.



MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

¹Effective March 31, 1995, the functions of the Secretary of Health and Human Services in social security cases were transferred to the Commissioner of Social Security Administration. P.L. No. 103-296. Accordingly, Shirley S. Chater, Commissioner of Social Security Administration, is substituted for Donna E. Shalala, Secretary of Health and Human Services, as Defendant in this matter.

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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AVTECH, INC., an Oklahoma
Corporation, and DONALD
A. McCANCE,

Plaintiffs,

vs.

APL INTERNATIONAL, INC.,
formerly APL SALES, INC.,
DONALD L. BOSHEARS, an
individual, RICK BOSHEARS,
an individual, FAMBO, INC.,
an Oklahoma Corporation,
LOVE BOX COMPANY, INC., a
corporation, BERNARD L.
ROBINSON, an individual,
HOMESTEAD TOOL AND MACHINE,
INC., a corporation,

Defendants.

Case No. 94-C-506-BU

JUL 20 1995

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE JUL 21 1995

ORDER GRANTING PERMANENT INJUNCTION

This matter comes before the Court upon Plaintiffs' Application for Entry of Permanent Injunction Order (Docket Entry #92) and Brief in Support of Application for Entry of Permanent Injunction (Docket Entry #93). Upon due consideration of the application and brief, the Court finds Plaintiffs' application should be granted.

Under 35 U.S.C. § 283, a court "may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent on such terms as the court deems reasonable." Although the court's denial or grant of an injunction is discretionary, injunctive relief against an adjudged infringer is usually granted. KSM Fastening Systems, Inc. v. H.A. Jones Co., Inc., 776 F.2d 1522, 1524 (Fed. Cir. 1985). This is because the

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right to exclude recognized in a patent is but the essence of the concept of property. Richardson v. Suzuki Motor Co., Ltd., 868 F.2d 1226, 1246-47 (Fed. Cir.), cert. denied, 493 U.S. 853 (1989). Thus, the general rule is that an injunction will issue when infringement has been adjudged, absent a sound reason for denying it. W.L. Gore & Associates, Inc. v. Garlock, Inc., 842 F.2d 1275, 1281 (Fed. Cir. 1988).

In the instant case, infringement has been adjudged in the Findings of Fact and Conclusions of Law dated May 9, 1995, and Defendants have provided no reason for denying the requested permanent injunction by Plaintiffs. Indeed, Defendants have not filed any response to Plaintiffs' application and brief. Consequently, the Court finds that injunctive relief is appropriate.

Plaintiffs have requested that the Court require destruction of the mold, which produced the infringing product, as part of the permanent injunction. The Court declines to grant such request. The Court concludes that the terms of the permanent injunction as set forth below is sufficient to prevent any future violation of the patents by Defendants.


Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' Application for Entry of Permanent Injunction Order (Docket Entry #92) is **GRANTED**.

IT IS FURTHER ORDERED pursuant to 35 U.S.C. § 283 that Defendants and all persons in privity or in active concert or participation with them are enjoined and restrained from directly

or indirectly making or causing to be made, using or causing to be used, selling or causing to be sold, any and all apparatus made in accordance with or embodying the invention claimed in the U.S. Patent Nos. 5,269,261 and Des. 345,633 including Defendants' "Chase-N-Scratch" product, and from directly or indirectly using any molds, inventory of articles, signs, brochures, catalogs, advertisements and other materials promoting and leading to infringement of Plaintiffs' patents and from infringing upon or violating the rights of Plaintiffs in the patents in any way whatsoever.

ENTERED this 20th day of July, 1995.



MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE **FILED**
NORTHERN DISTRICT OF OKLAHOMA

JUL 20 1995

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

WALTER LEON WILSON,

Plaintiff,

vs.

LIEUTENANT EDWARDS, et al.,

Defendants.

Case No. 94-C-26-BU

ENTERED ON DOCKET


DATE JUL 21 1995

JUDGMENT

This action came before the Court upon motions for summary judgment and the issues having been duly considered and a decision having been duly rendered and Defendants, Susie Esmond and Lovie Davis, having been dismissed from this action,

It is ORDERED and ADJUDGED that judgment be entered in favor of Defendants Brian Edwards, Bernard Klinger, Curtis Samuel, Denise Corley and the Tulsa County Sheriff's Department against Plaintiff Walter Leon Wilson.

Dated at Tulsa, Oklahoma, this 20th day of July, 1995.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
JUL 20 1995

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

WALTER LEON WILSON,

Plaintiff,

vs.

LIEUTENANT EDWARDS, et al.,

Defendants.

Case No. 94-C-26-BU

ENTERED ON DOCKET

DATE JUL 21 1995

ORDER

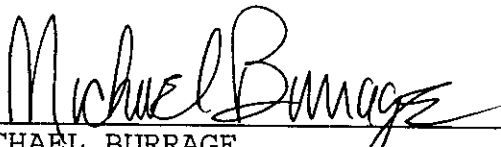
On January 11, 1994, Plaintiff, Walter Leon Wilson, commenced this action pro se and in forma pauperis under 42 U.S.C. § 1983, alleging violations of his constitutional rights. In accordance with 28 U.S.C. § 636(b)(1)(B), this Court referred the matter to United States Magistrate Judge Jeffrey S. Wolfe for submission of a report and recommendation. On April 25, 1995, Magistrate Judge Wolfe issued a Report and Recommendation, wherein he recommended that summary judgment be granted in favor of Defendants, Brian Edwards, Bernard Klingler, Curtis Samuel, Denise Corley and the Tulsa County Sheriff's Department and that the complaint against Defendants, Susie Esmond and Lovie Davis, be dismissed. In the Report and Recommendation, Magistrate Judge Wolfe advised Plaintiff that he must file any objections to the Report and Recommendation within ten (10) days and that a failure to so object would result in a waiver of an appeal of the District Court's Order. On May 22, 1995, the Court, upon Plaintiff's motion, granted Plaintiff an extension of time until June 12, 1995 to file any objections to the Report and Recommendation. Thereafter, on July 12, 1995, the Court

advised Plaintiff that if no objections to the Report and Recommendation were filed on or before July 19, 1995, the Court would adopt the Report and Recommendation in its entirety.

The Court has reviewed the file and has found no objections to the Report and Recommendation. Because Plaintiff has failed to object to the Report and Recommendation within the time prescribed, the Court hereby ADOPTS the Report and Recommendation of Magistrate Judge Wolfe in its entirety.

Accordingly, the Report and Recommendation (Docket No. 36) is AFFIRMED. The Motion for Summary Judgment (Docket No. 15), the Motion for Summary Judgment (Docket No. 20) and the Motion to Dismiss (Docket No. 23) are GRANTED. The alternative Motion for Summary Judgment (Docket No. 23) is declared MOOT. Defendants, Susie Esmond and Lovie Davis, are DISMISSED. Judgment shall issue forthwith as to the remaining Defendants.

Entered this 20 day of July, 1995.



MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 20 1995

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

CHARLES FREDERICK,

Plaintiff,

vs.

STATE OF OKLAHOMA,

Defendant.

No. 95-C-586-BU

ENTERED ON DOCKET

DATE JUL 21 1995

ORDER

Plaintiff, an inmate at James Crabtree Correctional Center, has filed with the Court a motion for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915, and a "Motion to Compel Writ of Mandamus." Plaintiff contends that the Tulsa County District Court has failed to rule on his "motion to vacate" in Case No. JVD-84-114 which is an action seeking to terminate Plaintiff's parental rights as a result of his present conviction in Case No. CRF-86-2147. He further contends that he is being denied his right of access to the courts under the Due Process Clause because on May 23, 1995, the Court of Criminal Appeals declined to exercise jurisdiction over his state petition for a writ of mandamus since the relief sought by Petitioner was "not directly arising out of a criminal matter."¹ Plaintiff requests this Court to issue an order directing Tulsa County District Court to rule on his "motion to vacate."

In reliance upon the representations set forth in the motion, the Court grants Plaintiff leave to proceed in forma pauperis. The

¹Plaintiff has not sought relief with the Oklahoma Supreme Court.

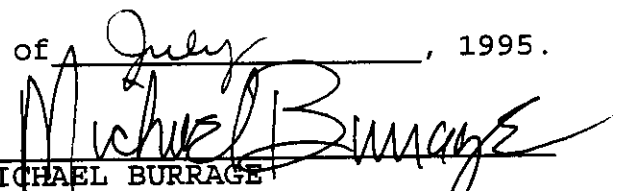
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Court concludes, however, that Plaintiff's claims should be dismissed as frivolous under 28 U.S.C. § 1915(d) because the writ of mandamus has been abolished.² See Fed. R. Civ. P. 81(b). Even after liberally construing Plaintiff's action as one in the nature of mandamus, this Court lacks original jurisdiction to compel an officer or employee of the State of Oklahoma to perform a duty owed to Plaintiff. See 28 U.S.C. § 1361 ("The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff").

ACCORDINGLY, IT IS HEREBY ORDERED that:

- (1) Plaintiff's motion for leave to proceed in forma pauperis (doc. #2) is **granted**; and
- (2) Plaintiff's action in the nature of a writ of mandamus is hereby **dismissed** as frivolous under 28 U.S.C. § 1915(d).

IT IS SO ORDERED this 20th day of July, 1995.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

²The federal in forma pauperis statute is designed to ensure that indigent litigants have meaningful access to the federal courts without prepayment of fees or costs. Neitzke v. Williams, 490 U.S. 319, 324 (1989); 28 U.S.C. § 1915(d). To prevent abusive litigation, however, section 1915(d) allows a federal court to dismiss an in forma pauperis suit if the suit is frivolous. See 28 U.S.C. § 1915(d). A suit is frivolous if "it lacks an arguable basis in either law or fact." Neitzke, 490 U.S. at 325; Olson v. Hart, 965 F.2d 940, 942 n.3 (10th Cir. 1992). A suit is legally frivolous if it is based on "an indisputably meritless legal theory." Denton v. Hernandez, 112 S. Ct. 1728, 1733 (1992) (quoting Neitzke, 490 U.S. at 327). A complaint is factually frivolous, on the other hand, if "the factual contentions are clearly baseless." Id.